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Volume A

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**TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1946**

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**No. 38**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**vs.**

**DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION**

---

**No. 39**

**INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER**

**vs.**

**DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD**

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**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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**PETITIONS FOR CERTIORARI FILED JANUARY 29, 1948  
CERTIORARI GRANTED APRIL 22, 1948**



# VOLUME A RECORD.

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United States Circuit Court of Appeals  
EIGHTH CIRCUIT.

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No. 12,641

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DONNELLY GARMENT COMPANY, A  
CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT.

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DONNELLY GARMENT WORKERS' UNION,  
INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS'  
UNION, INTERVENER.

---

ON PETITION FOR REVIEW OF ORDER OF NATIONAL  
LABOR RELATIONS BOARD

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FILED AUGUST 5, 1948.

PLEADINGS.  
PETITION TO REVIEW.  
ANSWERS.

**United States Circuit Court of Appeals**  
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**CORPORATION, PETITIONER,**  
**VS.**  
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**RESPONDENT.**

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**INTERVENER.**  
**INTERNATIONAL LADIES' GARMENT WORKERS'**  
**UNION, INTERVENER.**

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**ON PETITION FOR REVIEW OF ORDER OF NATIONAL**  
**LABOR RELATIONS BOARD.**

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**FILED AUGUST 5, 1943.**

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**PLEADINGS.**  
**PETITION TO REVIEW.**  
**ANSWERS.**

# INDEX

	Original	Print
Petition of Donnelly Garment Company for Review of Order of National Labor Relations Board	1	1
Order of National Labor Relations Board, June 9, 1943	5	4
Assignment of Errors	8	7
Answer of National Labor Relations Board to Petition for Review and Request for Enforcement of Order	346	361
Response of Donnelly Garment Company to Application of National Labor Relations Board for Enforcement of Order	351	365
Order of United States Circuit Court of Appeals Granting Motion of Donnelly Garment Workers' Union for Leave to Intervene, etc.	354	368
Order of United States Circuit Court of Appeals Granting Leave to International Ladies' Garment Workers' Union to Intervene and to File Brief, etc.	355	369
Complaint (Board's Exhibit 1-DD)	356	369
Amended Charge (Board's Exhibit 1-CC)	364	375
Petition of Donnelly Garment Workers' Union for Leave to Intervene (Board's Exhibit 1-RR)	394	377
Order Permitting Intervention of Donnelly Garment Workers' Union (Board's Exhibit 1-SS)	399	380
Answer of Intervener, Donnelly Garment Workers' Union, to Complaint (Board's Exhibit 1-AAA)	400	381
Answer of Respondent, Donnelly Garment Company to Complaint (Board's Exhibit 1-JJJ)	403	383
Letter, Ernest C. Dunbar, Acting Regional Director, to Mrs. James A. Reed, President, Donnelly Garment Company, August 25, 1938	414	391
Proposal of International Union	415	392
Exhibit B, Letter, Paul F. Broderick, Acting Regional Director, to Reed and Ingraham, February 4, 1939	474	407
Application of Intervener, Donnelly Garment Workers' Union, for an Election by the Employees and For Continuance (Board's Exhibit 1-MMM)	489	409
Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act (Board's Exhibit 1-NNN)	491	410
Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act (Board's Exhibit 1-OOO)	492	412
Motion of Intervener, International Ladies' Garment Workers' Union, to Strike Portions of Answer of Donnelly Garment Company and Granting Thereof (Board's Exhibit 1-QQQ)	493	414
Amended Complaint (Board's Exhibit 1-RRR)	503	421
Motion of Respondent, Donnelly Garment Company, to Strike Portions of Amended Complaint (Board's Exhibit 1-TTT)	511	428
Motion of Intervener to Strike Portions of Amended Complaint (Board's Exhibit 1-UUU)	515	430
Motion of Intervener, Donnelly Garment Workers' Union, for Continuance (Board's Exhibit 1-XXX)	517	430
Motion of National Labor Relations Board to Amend Complaint (Board's Exhibit 1-ZZZ)	520	431



Motion of Respondent, Donnelly Garment Company, to Strike Portions of Amended Complaint (Board's Exhibit 1-AAAA)	534	434
Answer of Respondent, Donnelly Garment Company, to Amended Complaint (Board's Exhibit 1-BBBB)	538	435
Answer of Intervener, Donnelly Garment Workers' Union, to Amended Complaint (Board's Exhibit 1-CCCC)	545	440
Motion of Respondent, Donnelly Garment Company, to Dismiss Complaint, and Denial Thereof (Board's Exhibit 1-FFFF)	548	441
Motion of Respondent, Donnelly Garment Company, to Dismiss Certain Paragraphs of Amended Complaint, and Ruling Thereon (Board's Exhibit 1-GGGG)	549	442
Amended Complaint (Board's Exhibit 1-KKKK)	557	448
Answer of Respondent, Donnelly Garment Company, to Amended Complaint (Board's Exhibit 1-LLLL)	565	454
Answer of Intervener, Donnelly Garment Workers' Union, to Amended Complaint (Board's Exhibit 1-MMMM)	574	461
Motion of National Labor Relations Board to Amend the Amended Complaint and denial thereof (Board's Exhibit 1-TTTT)	576	462
Motion of Respondent, Donnelly Garment Company, to Clarify Rulings of Trial Examiner	577	463
Motion of Intervener, Donnelly Garment Workers' Union, to Clarify Rulings of Trial Examiner	580	465
Ruling of Trial Examiner Denying Motion of Respondent, Donnelly Garment Company, to Clarify his Rulings	583	467
Motion of Respondent, Donnelly Garment Company, for Leave to File Certain Documents, etc.	584	468
Petition of Employer for Investigation and Certification of Representatives Pursuant to Section 9 (c) of National Labor Relations Act	585	469
Letter, Hugh E. Sperry, Acting Regional Director, to Donnelly Garment Company and Donnelly Garment Sales Company, September 8, 1939	586	470
Order Denying Motion of Respondent, Donnelly Garment Company, for Leave to File Certain Documents, etc.	588	472
Order Designating James C. Batten as Trial Examiner in Further Hearing of Case, etc. (Board's Exhibit 1-BBBBBB)	589	473
Application of Respondent, Donnelly Garment Company, for Designation of Another Trial Examiner in the Place and Stead of James C. Batten (Board's Exhibit 1-CCCCC)	591	474
Affidavit of Prejudice of R. J. Ingraham	592	475
Application of Respondent, Donnelly Garment Company, for Continuance of Hearing (Board's Exhibit 1-EEEEEE)	614	494
Order Denying Applications of Respondent, Donnelly Garment Company, for Designation of Another Trial Examiner and for a Continuance (Board's Exhibit 1-GGGGG)	620	498
Exceptions of Respondent, Donnelly Garment Company, to Denial of Application for Designation of Another Trial Examiner and for a Continuance (Board's Exhibit 1-QQQQQ)	623	502
Exceptions of Intervener, Donnelly Garment Workers' Union, to Order Denying Designation of Another Trial Examiner, and for a Continuance (Board's Exhibit 1-RRRRR)	627	504
Rulings of Trial Examiner (Board's Exhibit 1-YYY)	629	505
Rulings of Trial Examiner (Board's Exhibit 1-SSSS)	634	507

	Original Print	
Intermediate Report of Trial Examiner, Dated October 7, 1939	637	519
Decision and Order of National Labor Relations Board, March 6, 1940	681	552
Statement of Case	682	553
Findings of Facts	690	563
Conclusions of Law	730	615
Order of National Labor Relations Board	730	615
Decision and Order of National Labor Relations Board, June 9, 1943	732	618
Order of National Labor Relations Board	734	620
Intermediate Report, Memorandum as to	736	622

[fol. 1] Petition of Donnelly Garment Company for  
Review of Order of the National Labor Relations  
Board.

(Filed in United States Circuit Court of Appeals on  
June 21, 1943.)

Before the United States Circuit Court of Appeals for the  
Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,  
No. 12,641 vs.

National Labor Relations Board, Respondent.

To the Honorable United States Circuit Court of Appeals  
for the Eighth Circuit:

Comes now Donnelly Garment Company, a corporation,  
and petitions this Court for a review of a certain order  
entered on June 9, 1943, by the National Labor Relations  
Board in a proceeding instituted by it against your peti-  
tioner in a cause entitled "In the Matter of Donnelly  
Garment Company and International Ladies' Garment  
Workers' Union and Donnelly Garment Workers' Union,  
Party to a Contract", numbered before the said National  
Labor Relations Board as Case No. C-1382.

Your petitioner, for convenience, will designate respond-  
ent National Labor Relations Board as the Board, the  
Donnelly Garment Workers' Union as DGWU, and the  
International Ladies' Garment Workers' Union as  
ILGWU.

In support of said petition your petitioner respectfully  
represents:

(a) The nature of the proceedings as to which this  
review is sought is as follows: The Board, upon charges



[fol. 2] dated August 9, 1938 and amended charges dated April 6, 1939 filed by the ILGWU, did, on April 27, 1939, issue its complaint against your petitioner, whereby your petitioner was charged with having engaged within the jurisdiction of the United States Court of Appeals for the Eighth Circuit in unfair labor practices within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449 U. S. Code, Title 29. Said complaint and the divers amendments thereto were duly answered by petitioner denying said allegations of the unfair labor practices aforesaid and affirmatively pleading legal objections to the Board's jurisdiction and to the proceedings herein and further pleading an unlawful conspiracy on the part of the ILGWU to force petitioner by fraud, violence and secondary boycott to compel its employees to join said union against their will in violation of the National Labor Relations Act, and further pleading that the Board and its agents and representatives aided and assisted the ILGWU in said unlawful conspiracy.

A hearing was had upon said complaint and the amendments thereto before a Trial Examiner designated by the Board, Mr. James C. Batten, which said hearings began on June 5, 1939, and continued until July 15, 1939.

The said trial examiner ruled that testimony of petitioner's employees as to how and why they formed and maintained the DGWU was immaterial and of no value and refused to permit petitioner to show by such evidence that it had not dominated or interfered with the rights of its employees to self-organization, or to show that the [fol. 3] ILGWU was engaged in said unlawful conspiracy, and refused to permit petitioner to submit other competent and material evidence.

Thereafter, the trial examiner filed his Intermediate Report and the Board, on March 6, 1940, made its Decision and Order in said proceedings, sustaining the rulings, findings and recommendations of the trial examiner, and finding that your petitioner had engaged in unfair labor practices in that it had dominated and interfered with its employees in their free choice of a labor union, and dis-

criminated against one May Fike by refusing to re-employ her.

Thereafter and on or about March 9, 1940, your petitioner filed in this Court its petition for a review of said order.

Thereafter and on November 6, 1941, this Court rendered its decision finding that your petitioner had been denied due process of law in said proceedings before the Board and its trial examiner because the said testimony of its employees so excluded and rejected as to how and why they formed and maintained the Donnelly Garment Workers' Union was competent and material. This Court remanded the case to the Board for further proceedings, including the taking of said testimony which had been erroneously excluded.

On April 21, 1942, the Board entered an order vacating its decision and order of March 6, 1940, and set said matter for further hearing on July 6, 1942, before the same Trial Examiner, Mr. James C. Batten, who had prejudged the testimony of petitioner's employees as being immaterial and of no value.

On July 8, 1942, prior to the taking of any testimony in said further hearing, your petitioner filed objections to [fol. 4] the designation of said James C. Batten as trial examiner in said further hearing because of his bias and prejudice against respondent and his prejudgment of the issues and particularly of the evidence of its employees to be adduced at such further hearings, and asked the Board to designate another trial examiner. On July 28, 1942, the Board denied your petitioner's application for designation of another trial examiner and said further hearing was had before said trial examiner, commencing on August 3, 1942, and concluded on September 17, 1942, who limited petitioner's evidence to the testimony of eleven employees with regard to how and why they voluntarily and without domination formed the DGWE, and the testimony of Mrs. James A. Reed, president of the Company, to matters occurring prior to July 15, 1939. He refused to receive other competent and material evidence, which we shall hereafter set forth more particularly.

Thereafter the trial examiner filed his Intermediate Report to the Board, again finding that your petitioner had engaged in unfair labor practices by dominating and interfering with its employees in their free choice of a labor union. Thereafter the Board, on June 9, 1943, filed and entered its decision and order in said proceeding, affirming all the rulings of the trial examiner and adopting in toto his findings, conclusions and recommendations, with one minor exception. It expressly stated, with regard to the testimony of petitioner's employees as to how and why they voluntarily and without domination formed and maintained the DGWU, as follows: "We are moreover impelled to adhere to the opinion, derived from our experience in an administration of the Act, that conclusion-[fol. 5] any evidence of this nature is immaterial to issues such as those presented in this case". Said decision and order are made a part hereof by reference and will be printed and filed herein in accordance with Rule 27 (1) of this Court as amended January 12, 1943. Said order is in words and figures as follows, to-wit:

#### "Order

"Upon the entire record in the case, and pursuant to Section 19 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

#### "1. Cease and desist from:

"(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers Union or any other labor organization of its employees;

"(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers Union, and from giving effect to its check-off agreement with said organization;



"(c) Discouraging membership in International Ladies' Garment Workers Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

"(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce the employees in the exercise of the rights guaranteed in Section 7 of the Act.

"(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

[fol. 6] "(a) Withdraw all recognition from Donnelly Garment Workers Union, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

"(b) Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers Union;

"(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in

paragraphs 2 (a) and (b) hereof; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization.

"(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

"And It Is Further Ordered that the complaint, insofar as it alleges that the respondent, by discriminating in regard to the hire and tenure of employment of May Fike, has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

"Signed at Washington, D. C., this 9 day of June 1943.

"Harry A. Millis,  
Chairman,

"Gerard D. Reilly,  
Member,

"John M. Houston,  
Member,

(Seal) NATIONAL LABOR RELATIONS BOARD."

(b) The facts and statutes upon which the venue in this proceeding are based are as follows:

Your petitioner, Donnelly Garment Company, is a corporation organized and existing under the laws of the State [fol. 7] of Missouri, and was at all the times herein referred to transacting business in the State of Missouri and within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

The National Labor Relations Act approved July 5, 1935 being Public Act, No. 198-74th Congress (49 Stat. 449; U.S. Code, Title 29, sections 151-166), in Section 10 (f) provides that "Any person aggrieved by a final order of the Board ... may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or

transacts business \*\*\* by filing in such court a written petition praying that the order of the Board be modified or set aside."

The alleged unfair labor practices referred to in the complaint are alleged to have occurred within the territorial jurisdiction of this Court.

(c) The relief prayed by your petitioner herein is that this Court take jurisdiction of this cause; that the National Labor Relations Board be directed and required to transmit to this Court a complete certified transcript of the entire proceedings in this cause before said Board; that upon the filing thereof this Court review the evidence, findings of fact, conclusions of law and the decision and order of said board and enter a judgment or decree vacating and setting aside said decision and order of the said board; and that your petitioner have such other and further orders, decrees and relief in the premises as [ahll] be proper and just.

[fol. 8] (d) The points on which your petitioner intends to rely in support of [hits] its petition for review are as follows:

Your petitioner assigns as error each and all of the following matters, and each and all of the following rulings, actions and conduct of the Board and of the trial examiner in said proceedings, to-wit:

1.

Your petitioner has been denied a fair trial before an impartial tribunal.

Trial Examiner, James C. Batten, from the inception of the hearings showed bias and prejudice against petitioner and a fixed and unalterable view and opinion that testimony of petitioner's employees concerning how and why they formed and maintained the DGWU as their bargaining representative was utterly worthless and immaterial. This Honorable Court ruled that said testimony was material and remanded the case for further proceedings. The Board again designated James C. Batten as trial examiner to conduct said further hearing; although he had prejudged the evidence and repeatedly stated during the first hear-



ings his determined view that said evidence was of no value.

Petitioner filed with the Board its objections to the re-designation of the said James C. Batten as trial examiner and requested the designation of another trial examiner, which objections and motion (Board's Exhibit 1-CCCC) the Board overruled, said rulings being contained in Board's Exhibit 1-GGGGG. Your petitioner further protested to the said trial examiner, James C. Batten, against his proceeding as trial examiner, which said protests and [fol. 9] exceptions were designated Board's Exhibit 1-QQQQQ, which said protests and exceptions were disregarded and overruled by the trial examiner. The said James C. Batten as such trial examiner in such further hearings and in conformity with his fixed view and opinion as to the immateriality and worthlessness of said testimony of petitioner's employees disregarded said evidence and made the same ruling in his second Intermediate Report as he had previously made, and said bias and prejudice, and prejudgment of the issues were carried forward into the Board's Decision and Order by the Board's adopting the second Intermediate Report of James C. Batten and affirming all of his rulings and expressly stating (Decision and Order, P. 2) to-wit:

".... We are, moreover, impelled to adhere to the opinion derived from our experience in the administration of the Act that conclusionary evidence of this nature is immaterial to issues such as those presented in this case";

although this Honorable Court had expressly held that said evidence was material. (123 F.2d 215) That by reason of the matters aforesaid your petitioner has been denied a fair and impartial trial herein, and has been deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States."

## 2.

Petitioner has been denied a fair trial herein by reason of the rulings and action of the trial examiner in striking from petitioner's answer and amendments thereto Part B thereof, and in excluding all proof thereon and concerning the unlawful conspiracy of the ILGWU to compel petitioner

to force its employees, against their will, to join the [fol 10] ILGWU, and in furtherance of said conspiracy, and of the participation by the Board and its representatives to accomplish said unlawful purpose, and by reason of the affirmance by the Board of said rulings and action of the trial examiner.

3.

Petitioner has been denied a fair trial herein by reason of the nonjudicial attitude and rulings of the trial examiner, James C. Batten, and his biased and unfair conduct throughout both the first and second hearings, and the adoption and approval thereof by the Board, to-wit:

(a) That during the first hearing of this matter said trial examiner, James C. Batten, became biased against petitioner and took a nonjudicial attitude toward petitioner's witnesses and evidence, and said bias, prejudice and nonjudicial attitude of this trial examiner continued in and throughout the second hearing held herein, by reason of which said trial examiner in both of said hearings refused to receive competent, material and proper evidence offered by your petitioner, and admitted improper, irrelevant and incompetent evidence offered by the Board and ILGWU, and made many unfair and improper rulings and findings against petitioner and intervenor, throughout the course of both of said hearings, by reason of all of which your petitioner has been denied a fair trial herein and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(b) The exclusion by the trial examiner of testimony regarding violence of the ILGWU at other garment plants and of the testimony of employees as to the effect thereof upon them with reference to their attitude toward the [fol. 11] ILGWU and to the formation of the DGWU, was erroneous and denied to petitioner a fair trial herein.

(c) The exclusion by the trial examiner of evidence regarding the ILGWU's conspiracy to force petitioner to force the employees to join the ILGWU and of the participation of the Board and its agents and representatives therein, was erroneous and denied to petitioner a fair trial herein.

(d) The exclusion by the trial examiner of evidence of the terms of ILGWU contracts with other garment companies was erroneous and denied to petitioner a fair trial.

(e) The admission by the trial examiner of extended evidence concerning events prior to the enactment of the National Labor Relations Act and the basing of findings, conclusions and the Board's order thereon, was erroneous and denied to petitioner a fair trial herein.

(f) The numerous rulings of the trial examiner limiting petitioner in the introduction of material and competent evidence and in permitting the Board and ILGWU to introduce immaterial and incompetent evidence were erroneous and show the bias of the trial examiner and Board against petitioner and denied to petitioner a fair trial herein.

(g) The rulings of the trial examiner in the conduct of the second hearing in arbitrarily directing the order of proof and refusing to permit petitioner to proceed with its evidence in the order it desired, were erroneous and denied to petitioner a fair trial herein.

(h) The rulings of the trial examiner in the second hearing herein limiting the number of witnesses which petitioner and intervener were permitted to place on the stand, were erroneous and denied the petitioner a fair trial herein.

[fol. 12] (i) The rulings of the trial examiner in the second hearing herein, [confining] the testimony of petitioner to the "offers of proof" which had been rejected by him at the previous hearing, and construing and limiting the scope of the evidence under said offers of proof, and refusing to receive other competent and material evidence which had been rejected by the trial examiner at the previous hearing were erroneous and denied to petitioner a fair trial herein.

(j) The rulings of the trial examiner erroneously interpreted the opinion of the Circuit Court of Appeals remanding this case for further hearing, and limiting the petitioner in the presentation of its evidence in accordance with said erroneous interpretations, were erroneous and denied to petitioner a fair trial herein.

(k) The rulings of the trial examiner refusing to permit petitioner to complete the examination of Wave Tobin and in striking out the testimony given by her while on the stand were erroneous and denied to petitioner a fair trial herein.

(l) The rulings of the trial examiner in the second hearing permitting the Board and ILGWU to introduce as "rebuttal" evidence, evidence that was not proper rebuttal evidence, and in limiting the denying to petitioner the right to present material and proper evidence in sur-rebuttal were erroneous and denied to petitioner a fair trial herein.

(m) The rulings of the trial examiner at the second hearing herein permitting the Board and ILGWU to introduce evidence upon various matters, and with reference to matters occurring during certain periods of time, and in refusing to permit petitioner or intervener to introduce [fol. 13] countervailing evidence as to said matters and with reference to said periods of time, were erroneous and denied to petitioner a fair trial herein.

(n) The rulings of the trial examiner herein refusing to permit petitioner to introduce competent, material and relevant evidence, and in requiring petitioner to submit "offers of proof" thereof, and in rejecting said offers of proof and each of same were erroneous and denied to petitioner a fair trial herein.

(o) The rulings and action of the trial examiner referred to above and in subsequent points herein, and the rulings and action of the Board in affirming and adopting same, show the bias and nonjudicial attitude of the trial examiner and of the Board toward petitioner and its evidence, and denied to petitioner a fair and impartial trial herein and deprived petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

#### 4.

The Decision and Order of the Board is not supported by the evidence.

None of the findings or conclusions of the trial examiner and the Board essential to support the decision and order



of the Board are supported by any substantial evidence, or by any reasonable inferences therefrom, but all are contrary to the overwhelming evidence in the case and are based upon speculation, conjecture, and unwarranted inferences, and show the bias and prejudice of the trial examiner and Board against petitioner.

[fol. 14] (A) Said findings and conclusions with reference to the Loyalty League are not supported by the evidence and are erroneous.

1. The Loyalty League was not a "prior labor union" and the Donnelly Garment Workers' Union was not a successor or outgrowth thereof and the holding of the Newport News Shipbuilding case (308 U. S. 241) and similar cases is not applicable here.

2. The Loyalty League was not formed, dominated or used by petitioner and its alleged activities are not attributable to petitioner.

3. The Loyalty League did not do the things the Board and trial examiner finds it did.

(a) The issuance of Loyalty League Check to Mr. Tyler does not show domination of the DGWU by the Loyalty League when the circumstances are considered.

(b) The meetings of March 18th, March 30th and April 27th were not Loyalty League meetings.

(c) The Loyalty League did not participate in the Fern Sigler or Sylvia Hull incidents.

(d) The March 2nd statement was not inspired or circulated by the Loyalty League.

(e) Most of the other activities attributed by the trial examiner and Board to the Loyalty League were not activities of the League, but if such alleged activities occurred they were activities by the employees, as such, and not as members of the Nelly Don Loyalty League.

(B) Said findings and conclusions with reference to [fol. 15] "supervisory" employees and your petitioner's responsibility for the activities of such employees are not supported by the evidence and are erroneous.

1. The findings and conclusions that Rose Todd was a supervisory employee or that she represented the management or was held out by the management as its representative or that the employees regarded her as such or that your petitioner is responsible for her activities are not supported by the evidence.

2. The findings and conclusions that the instructors or thread girls were supervisory employees or that they represented the management or were held out as representing the management or that the employees regarded them as representing the management or that your petitioner was responsible for their activities are not supported by the evidence.

3. The findings and conclusions that Hobart Atherton, Florence Strickland, Lena Tyhurst, Martha Gray, Ortense Root, Heath Cowan, Marvin Price, Ted Scoles, Mary Bogart and Dewey Atchison were supervisory employees or represented the management or were held out as representing the management or were regarded by the employees as representing the management or that your petitioner was responsible for their activities are not supported by the evidence.

(C) The findings and conclusions that petitioner dominated or interfered with its employees in the free choice of a labor union or in the formation and administration of the DGWU by permitting the use of its facilities, such as bulletin boards, telephone system, messenger service, mimeograph, ditto and typewriting machines, files, desks and meeting space, are not supported by the evidence and are erroneous.

[fol. 16] (D) The findings and conclusions that petitioner dominated and interfered with the free choice of its employees of a labor union by or through the circulation of the "March 2nd statement" or the circumstances surrounding same are not supported by the evidence.

(E) The findings and conclusions that petitioner dominated and interfered with the free choice of the employees of a labor union or bargaining representatives through the March 18th meeting of employees or by the remarks

made by Mrs. Reed at said meeting are not supported by the evidence.

(F) The findings and conclusions that petitioner dominated the organization meeting of the DGWU on April 27, 1937 and thereby interfered with the free choice of its employees of a labor union or bargaining representatives are not supported by the evidence.

(G) The findings and conclusions that the prompt recognition of, and bargaining with, the DGWU by petitioner show domination of the DGWU or interference by petitioner with the free choice of its employees of a labor union or bargaining representatives, are not supported by the evidence.

(H) The findings and conclusions that the terms of the working agreements made between petitioner and the DGWU show domination of that union by petitioner or interference with its employees in their free choice of a labor union are not supported by the evidence.

1. Such findings and conclusions with reference to the "closed shop" provision in said contract are not supported by the evidence.

2. Such findings with reference to the method of determining piece work prices and that the appointment of [fol. 17] Rose Todd, Mrs. Nichols and Miss Spallito on the DGWU's committee for adjustment of piece work prices show domination of the DGWU by petitioner are not supported by the evidence.

(I) The findings and conclusions as to the instigation and approval of petitioner of the April 23d "demonstration" against Sylvia Hull and Fern Sigler and that petitioner thereby dominated, coerced or interfered with its employees in their free choice of a labor union are not supported by the evidence.

(J) The findings and conclusions as to domination, coercion and interference by petitioner with its employees in their free choice of a labor union, based on petitioner's alleged hostility towards the ILGWU, are not supported by the evidence.

(K) The findings and conclusions that the petitioner contributed to the support of the DGWU or participated or interfered in its administration are not supported by the evidence.

(L) The findings and conclusions that Sylvia Hull was laid off by petitioner because of her membership in and activity on behalf of the ILGWU and the findings and conclusions that petitioner discriminated in regard to the tenure of employment of Sylvia Hull and thereby discouraged membership in the ILGWU and interfered with its employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act are not supported by the evidence.

(M) The findings and conclusions that petitioner entered into a check-off agreement with the DGWU and that the deduction by petitioner from the wages of its employees of their dues to the DGWU constituted domination or interference by petitioner with the rights of its employees in the free choice of a labor union are not supported by the evidence.

(N) The numerous findings and conclusions of the trial examiner, adverse to petitioner, and adopted by the Board, hereinafter set forth in subsequent points, are not supported by the evidence but are built and based on conjecture, speculation, and false inferences not warranted by the evidence.

### 5.

The Board erred in the Decision and Order (in the second paragraph thereof) in finding that no prejudicial errors were committed in the rulings of the trial examiner, and erred in affirming the rulings of the trial examiner, for the reasons that said rulings were erroneous in law and contrary to the evidence, were prejudicial to petitioner, were due to the bias and prejudice of the trial examiner, and to his prejudgment of the evidence and issues against petitioner, and to his nonjudicial attitude in the conduct of the hearings, and for all the reasons and objections given and urged by petitioner at the time of the making of such rulings, and because same denied to petitioner a fair trial and deprived petitioner of its



liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 6.

The Board erred in its Decision and Order (in the third paragraph thereof) in adopting the findings, conclusions and recommendations made by the trial examiner in the Intermediate Report (excepting the conclusions of the trial examiner that petitioner has not discriminated in regard to the hire and tenure of employment of May Fike [fol. 19] and has not violated Section 8 (3) of the Act by refusing to reinstate Sylvia Hull, and excepting his recommendation that the complaint be dismissed insofar as the allegations that petitioner discriminated in regard to the hire and tenure of employment of May Fike), for the reasons that such findings and conclusions and each of same are not supported by the evidence or by any substantial evidence or by any reasonable inference therefrom, but are contrary to the evidence and to the law under the evidence and do not support any of the conclusions or orders of the Board and are insufficient therefor, and for the reason that same findings are biased, arbitrary, speculative and due to the prejudgment of the trial examiner and Board of the evidence and issues against petitioner, and not based upon a fair consideration and appraisal of all the evidence, and for the reason that said alleged acts do not tend to prove any of the charges against petitioner, are immaterial and irrelevant to any issue herein, and are not attributable to or binding upon petitioner, and deprived petitioner of a fair trial and of due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 7.

The Board erred in its Decision and Order (in the paragraph under the heading "A". The Remand; the evidence adduced pursuant thereto" pp. 1-2), in its findings and conclusions that the Board at the second hearing herein, in compliance with the Court's mandate, and pursuant to the respective offers of proof submitted by respondent (petitioner) and the DGWU at the original hearings, permitted the introduction of the testimony of re-



spondent's employees that they formed and joined the DGWU of their free will and that [there] were not influenced, interfered with or coerced by respondent (petitioner) in choosing that organization as their bargaining representative; and that the testimony received on said question "does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the DGWU which subjected that organization to the respondent's domination, and which removed from the employees' selection of the DGWU the complete freedom of choice which the Act contemplates"; and that such testimony is "totally unpersuasive that the employees voluntarily designated the DGWU", and in adhering to the opinion "that conclusionary evidence of this nature is immaterial to issues such as those presented in this case"; and that "the respondent dominated and interfered with the formation and administration of the DGWU and contributed support thereto, and that the respondent thereby interfered with the formation and administration of the DGWU and contributed support thereto, and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act", for the reason that said findings and conclusions and each of same are not supported by the evidence or the record herein and are the result of the prejudgment of the trial examiner and the Board of said issues and of the immateriality and worthlessness of the testimony of said employees as to whether they were dominated, coerced or interfered with by petitioner in their free choice of a labor union, and as to how and why they formed the DGWU, and for the reason that the trial examiner and Board failed to give any fair or genuine consideration to such testimony and because of the trial examiner's and Board's bias and prejudice against petitioner and against any evidence offered by petitioner.

[fol. 21]

8.

The Board erred in its order and each of the several paragraphs and provisions thereof numbered 1 (a), (b),

(c), (d), (e) and 2 (a), (b), (c), (d), for the reasons that same and each of same are not supported by the evidence or any reasonable inferences therefrom, are arbitrary and contrary to the law under the evidence, are the result of the prejudgment of the trial examiner and Board of the evidence and issues against petitioner, and to the failure of the trial examiner and Board to give any fair or genuine consideration to petitioner's evidence, and said order deprives petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 9.

The trial examiner erred in making the finding, statement and conclusion contained on Page 2 of the Intermediate Report that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties" at the hearing held beginning June 5 and ending July 15, 1939, and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the record, but on the contrary the record shows that petitioner was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby petitioner was denied a fair trial herein.

[fol. 22]

## 10.

The trial examiner erred in making the finding, statement and conclusion [contained] on Page 8 of the Intermediate Report that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties" at the hearing held beginning July 6 and ending September 17, 1942, and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the record, but on the contrary the record shows that petitioner was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues

and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby petitioner was denied a fair trial herein.

## 11.

The trial examiner erred in making the findings, statements and conclusions contained on Pages 9 and 10 of the Intermediate Report that "the undersigned accorded the respondent and the DGWU an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing and permitted Nell Quinlan Reed, the respondent's president, \* \* \* to testify in the further hearing upon all the issues set forth in the pleadings", and the Board erred in adopting said findings, statements and conclusions, for the reason that said findings, statements and conclusions are not supported by the record, but on the contrary the record shows that the petitioner and the intervener Donnelly Garment Workers' Union were repeatedly wrongfully denied the opportunity and right to introduce competent and material evidence [fol. 23] rejected at the prior hearing, and that the trial examiner refused to permit Nell Quinlan Reed to testify at the hearing beginning July 6, 1942 and ending September 17, 1942, upon many of the issues set forth in the pleadings and in addition thereto, struck out, over the objection of respondent, a large part of the testimony of said witness after same had been given, whereby petitioner was denied a fair trial.

## 12.

The trial examiner erred in making the finding, statement and conclusion contained on Page 10 of the Intermediate Report that "International Ladies' Garment Workers' Union, affiliated with American Federation of Labor, is a labor organization admitting to membership the factory employees of the respondent", and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the evidence or the record herein.

## 13.

The trial examiner erred in making the finding, statement and conclusion contained on Page 10 of the Intermediate Report, that the Donnelly Garment Workers'

Union "admits to membership all employees of the respondent", and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the evidence or the record herein.

## 14.

The trial examiner erred in making the following findings, statements and conclusions contained in Part III, A, of the Intermediate Report under the heading "Respondent's responsibility for the activities of various employees", and the subheadings numbered 1, 2, 3 and 4, [fol. 24] appearing at pages 11 to 17 inclusive of the Intermediate Report, including the footnotes; and the Board erred in adopting said findings, statements and conclusions and each of same and in [basins] its Decision and Order thereon, to-wit:

" \* \* \* It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and factory superintendent the instructors had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became factory manager in June 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the factory and personally observed the conduct, character of work, efficiency and general attitude of all employees.

" \* \* \* In view of the number of employees, and the size of the factory, the undersigned finds that Baty's testimony in regard to the elimination of supervisors to be incredible.<sup>17</sup>

(Footnote 17) "The undersigned is unimpressed by the evidence adduced by the respondent to establish that all supervisory authority in June 1935 was vested in Baty. Appraising the respondent's evidence in the light of the contradictions and implausibilities found throughout, especially in the testimony of Mrs. Reed, Mrs. Reeves and Baty, the undersigned is fully persuaded of its untrustworthy character. The evidence is further weakened by the plain indications during examination of the instructors, thread girls and employees, assuming *arguendo*, that any change in the supervisory set up of the plant was made when Baty took charge, it was known only to Baty and the respondent's officials. Finally, it is most improbable that such a far reaching reorganization of a large factory would occur without some

notice to those affected and particularly to the employees who had for years, according to Mrs. Reed, been under \*\*\*\* 'more supervision and more executives than — I know. I have more than are usual in the plant of this kind . . . yes our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge.

"It is plain from all the circumstances disclosed by the record that after June 1935, the instructors and the thread girls continued in their capacity as supervisors in charge of the operators who work in the various sewing sections [fol. 25] of the factory. \* \* \* There is substantial evidence, however, that they do perform functions which make them part of the supervisory staff.

"The instructors, assisted by the thread girls<sup>18</sup> assume complete charge of and are fully responsible for their respective sections of the factory. Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes. Mrs. Reeves, who [proceeded] Baty as factory manager and is now in charge of respondent's merchandising department, stated in an affidavit dated October 30, 1937, and confirmed the same in her testimony that: 'competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same.' (emphasis supplied) In addition to these duties the instructors perform other functions as the representative of the management. When work is slack in the section the instructors determine who shall take a day off and in what order the operators will be released from the section. Although Baty denied that the instructors are charged with the duty of disciplining and reporting upon the efficiency of the operators who work in their respective section, the evidence is convincing that they do so the same as before the advent of Baty as factory manager, in June, 1935. The instructor constitutes the link through which the operators learn the management's directions and the management learns whether a girl is a desirable employee, her capacity for work, her attitude toward work, and her performance of the work.

(Footnote 18) "The evidence clearly indicates that in the absence of the instructor, her duties are performed by the thread girl.



"The record clearly reveals that the instructors exercise supervisory, economic control over the operators in their sections. This is particularly true when as here the operators are paid upon a piece-rate basis. The instructors plan the work in each section, determining when the work comes into the section which operator shall work upon the more desirable bundles. They keep the operators busy and correct their mistakes. When repair work is necessary, the instructor decides whether the operator must rip the work out and do it over on her own time or receive pay for the work. Instructors report to the office weekly at a 'going over of the cards' on the operators work for the past week. During temporary slack periods the instructors designate those operators who can be spared or transferred to other sections.

[fol. 26] "Over and above the supervisory and economic control exercised by the instructors, they regard themselves as supervisors and are so regarded by the operators; they are paid twice a month, their names being carried on a time workers pay roll, while the operators are paid on a piece rate basis weekly; and they are responsible to Baty for the quality and quantity of work in their respective sections. Although a substantial number of employee-operators testified during the hearing, none of them stated that Baty personally gave them any instructions or directions or conferred with them about their work. The undersigned is convinced that there was no apparent change in the conduct of instructors or thread girls after June 1935. Furthermore, it is undisputed that the respondent has continued to hold out the instructors and thread girls to the employee-operators as supervisory employees and has given no notice of any kind to the operators that the instructors' authority had been reduced or in any way changed in June 1935.

"The respondent contended that there is no distinction between the duties of the instructor and the thread girl, one having charge of quality and the other quantity, and that none of them act in a supervisory capacity. Even if it be assumed arguendo that there is no appreciable distinction, the undersigned is of the opinion that instructors and thread girls have supervisory authority. Mrs. Reeves testified that the word instructor and floor (thread) girls

and the word supervisory 'means one and the same to me.' Rose Todd, hereinafter found to represent the management, testified that the respondent does not use the term 'supervisor' but that it does have an employee called an instructor in charge of 40 operators and a second girl that might be called an assistant instructor. It is clear from the record and the undersigned is convinced and so finds, that the instructors and thread girls actually and in all respects serve as foremen and assistant foremen of the sections of 40 operators.<sup>19</sup>

(Footnote 19) "The absence of any hierarchy of supervisors between the operators and Baty, with solely the instructors to transmit orders and report on work, renders the instructors more nearly approximate to foremen than any other commonly known class of supervisors. The descriptions of foremen in works on labor relations often point to the "teacher" aspect of his duties. \*\*\*

"It is plain from the foregoing, that the instructors and thread girls are supervisory employees, and exercise economic control over the operators, that prior to June 1935, the instructors and the thread girls were admittedly supervisory employees, that since that time the respondent has continued to hold them out to the operators as supervisory [fol. 27], employees, and that the respondent has given no notice of any kind to the operators that the instructors and thread girls have any less authority than formerly. Since the instructors and thread girls are charged with certain duties and economic control which are supervisory, and disciplinary in nature, their interests are closely related to those of the management and are often incompatible with those of the ordinary worker. On the basis of all the evidence, the undersigned finds that instructors and thread girls are supervisory employees and that they act as representatives of the management in the factory.<sup>20</sup>

(Footnote 20) "The instructors are as important as the lead men and group leaders held by the Supreme Court to be employees of such a kind that the Board may base employer liability for unfair labor practices upon the employer's failure to prevent their activities in behalf of a favored union. \*\*\*"

## "2. Rose Todd.

"Todd was one of the most active and outstanding among the employees of the respondent in the affairs of the League and in the formation and administration of the DGWU. She was president of the League during the time

that it played so effective a part in resisting the organizational campaign of the ILGWU. \* \* \* Her status in the factory and her relation to the management is in dispute.

"Todd, with an interruption of 2 years, has worked for the respondent for approximately 13 years. She was a nurse by profession and through acquaintance with Mrs. Reed as a nurse, secured a job at the respondent's factory in 1926. She worked for a short time as an operator and as a thread girl, during the early part of her employment. Also, prior to the interruption, Todd held various responsible positions with the respondent, including that of an instructor<sup>21</sup> and as an assistant to Dewey Atchison, production engineer, in making time studies, studying production methods and studying rates of piece-work wages. \* \* \* When she returned to the employ of the respondent in 1933 Todd worked for several months as a thread girl. Until sometime in the spring of 1937 she helped in various sections of the factory \* \* \* .

"From the record it is impossible to determine that Todd in 1937, 1938 and 1939 had any well defined duties. During this period she was not assigned to any particular department, being directly responsible to Baty, the factory manager. Todd was assigned a desk in the factory—first on the ninth floor and later on the seventh floor—charged with the responsibility of keeping the various [fol. 28] sections supplied with the necessary materials for maintaining operations and checking up on the delivery of various supplies that should be in the sections. In addition, if any of the sections were short of supplies which delayed the work Todd was notified and arranged for the proper supplies to be forwarded to the department. These duties required that Todd move throughout the various sections of the factory and contact instructors and thread girls. For a period of 1938 Todd again worked with Dewey Atchison on some special work. Baty testified that Todd received the same vacations as given to the instructors and that in August 1937, 'he couldn't let Todd go (on vacation) in August as she was indispensable'. The president of the First National Bank of Kansas City with which the company carried its account testified that he had known Todd for 10 or 12 years as 'a kind of all round man' for the company and that she had come into the bank for several years as respondent's representative.

"During the period from April 16 to 30, 1937, Todd was carried on the designing pay roll, from May 1 to 31, 1937, on the hand sewing pay roll, from June 1 to June 30, 1937, on the button and button hole pay roll and from July 1 to 15, 1937, on the receiving department pay roll, although she did not work in these sections during these pay periods. When the DGWU was organized she was receiving a salary of \$130 a month and although the DGWU expressed to the respondent a desire to have her services part time, the respondent continued to pay her the \$130 a month, in addition to which the DGWU paid her \$65 per month.

"The undersigned, appraising Todd's entire employment record with the respondent, is persuaded and finds that her position in the factory was one of considerable responsibility, involving duties of a supervisory nature.

"Evidence on Todd's activities in the factory plainly points to the fact that she occupied a close and confidential relation to the management which was made known to the employees by respondent's conduct. On April 23, 1937, when anti-ILGWU demonstrations against Fern Sigler, a member of the ILGWU, took place in the factory, the disturbance was reported to Rose Todd. When Baty ordered Sigler from her section to the office he was accompanied by Todd. At the conference which followed, Todd dominated the same and took the lead in questioning Sigler about her union affiliation although both Baty and Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Todd opened the conference and talked to Sigler of the respondent's policy of operating an open shop as if she represented the respondent, for example: ".... We have had union people work here for years \*\*\* we don't care. We have [fol. 29] hired union people \*\*\* I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it. \*\*\* We are going to run an open shop as long as the majority feels that way." Todd also said: "My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think I could join the union than a man in the moon. I'd expect to



be put out on the street and left there.' Baty and Hyde acquiesced in all that Todd said and talked in the same vein. Todd also discoursed at length upon 'our' employment policy. After the demonstrations in Sigler's section and the conference in the office it was Todd who finally sent the employees back to work. Todd's status around the plant was such that the respondent's telephone operators announced meetings over the interdepartmental telephone when Rose Todd asked them to, and instructors took directions from Todd when she directed the form in which they were to turn in time slips for employees absent from work on DGWU business. In addition, Rose Todd's position as president of the League, in which all of the respondent's supervisory force including Mr. Keyes, sales manager, Mrs. Hyde, Mrs. Reeves and Dewey Atchison were members, and which came into existence to counteract the activities of the ILGWU, marked her in the eyes of the employees as a person in whom the management had confidence and whose views reflected those of the management. The respondent did nothing to discourage Todd's activities, although fully aware of them.

"Irrespective of Todd's supervisory status, the undersigned is of the view that the evidence, as a whole, clearly identifies her with the management in the minds of the employees.<sup>22</sup> The undersigned finds that Rose Todd occupied a close and confidential position with the respondent and further finds that in such position she was acting for and on behalf of the respondent.

### "3. Hobart Atherton:

"..... He transmits orders to six employees who work with him in that department, shows them how to do the work when occasion demands, and [deeps] a record of the jobs performed. He also assists with repair work whenever needed. .... There is no evidence that any one else exercises any supervision or guidance over the work performed in the maintenance department, or that Baty, the factory superintendent, in any way directs these employees.

"The undersigned finds that Hobart Atherton is a supervisory employee of the respondent in charge of the main- [fol. 30]. tenance department of the plant.<sup>23</sup>



(Footnote 23) "Atherton's position corresponds to those of the "group leaders" whose supervisory status was an issue in *H. J. Heinz Co. v. N.L.R.B.* 311 U.S. 514, 518, 521.

"4. Other supervisory employees.

"The status of certain other employees who were active in the League or the D.G.W.U. and who occupy responsible positions with The respondent is in dispute. These persons are Florence Stickland, in charge of the pattern department; Lena Tyhurst, assistant factory manager and in charge of the inspection department; Martha Gray, in charge of the outlet store; Ortense Root, in charge of the sample department; Heath Cowan, in charge of the receiving department (piece goods); Marvin Price, in charge of building maintenance; Ted Scholes, in charge of the cutting department; and Mary Bogart, in charge of the dividing department. Some of these employees admittedly had supervisory authority before the appointment of Baty as factory manager. They are all, except Martha Gray, under the supervision of Baty and so far as the record indicates, their relationship to the management after Baty assumed charge was identical with their prior duties and responsibilities as far as the employees in the various departments were concerned. The employees in these departments were not aware of any curtailment in the authority of those in charge, after Baty was made factory manager.

"The undersigned finds that the above named persons are supervisory employees and as such were representatives of the management. <sup>24</sup>

(Footnote 24) "The respondent contends that in Baty resided the sole supervisory responsibility over the employees in each of these departments. See footnote 17 *supra*, for the undersigned's rejection of this untenable position."

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, do not show, or support a finding or conclusion, that the instructors, Rose Todd, Hobart Atherton or the various employees referred to in subparagraph 4, p. 17 or any of them, were supervisory employees of respondent or represented "The management" or were acting for or in behalf of the management with respect to the formation of the Donnelly Gar-

[fol. 31] ment Workers' Union or with respect to any of the matters referred to in said Part III, A, or that respondent held said employees, or any of them, out to its employees as representatives of the management or as acting for the management with respect to any of such matters, or that the employees regarded or had reason to regard said employees or any of them as representatives of the management or as acting on behalf of the management with respect to any of such matters, or occupied a close or confidential position with petitioner, or that said alleged supervisory employees exerted any pressure or coercion on the employees or interfered in any way with their free choice of labor affiliations or that petitioner's employees were coerced, influenced or interfered with by any of said alleged supervisory employees with respect to any of said matters; because said findings, statements and conclusions, and portions thereof, and each of same, are not supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against petitioner or support any of the trial examiner's conclusions or recommendations adverse to petitioner, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the trial examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not [fol. 32] based on any substantial, competent evidence; do not support a finding or conclusion that the petitioner was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the trial examiner against petitioner and his nonjudicial attitude toward the evidence; because the trial examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to petitioner; because petitioner is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to

be drawn therefrom and same are not binding on petitioner; and because petitioner has, for each and all of the foregoing reasons, been denied a fair trial and has been deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 15.

The trial examiner erred in his findings, statements and conclusions contained in Part III, B, of the Intermediate Report (pp. 17-20) under the heading "Events prior to the effective date of the Act" and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"On both occasions the respondent's supervisory force attended the meetings (i.e. meetings of ILGWU at Musicians' Hall, March 15, 1934, and at Eagles Hall December 4, 1934) in a group, including Mrs. Reeves, then production manager, Mrs. Hyde, personnel manager, and many of the instructors. Rose Todd, whose relation to the management is discussed hereinbefore, attended the meeting at the Musicians Hall. Dewey Atchison, production engineer, attended the meeting at Eagles Hall.

[fol. 33] "During this period at least a dozen of the employees joined the ILGWU, several of whom became active, passing out notices of meetings and soliciting their fellow workers to join the organization. Many of the employees attending the meeting and others, irrespective of membership in the ILGWU, were called to the office where Mrs. Reeves questioned them about their interest in the union and warned them that joining would do them no good. Employees were variously told by Mrs. Reeves that they had been 'listening too much to somebody outside', that 'Donnelly's don't belong to the union and they never will' and she had thought they had better 'sense' than to join the ILGWU and that they had been 'misled' in doing so, and they ought to have 'a darn good spanking' for their own good. Mrs. Gray, in charge of respondent's outlet store, told employees it was a 'shame' that an employee had joined the ILGWU.

"Dewey Atchinson asked employees why they did not come to the management instead of 'going down to a bunch of foreigners', advised against getting 'messed up' with the union and warned they would be fired if they did. The instructors warned many of the employees that those who joined the ILGWU would be discharged and urged employees not to give their money 'to those foreigners'. One instructor, referred to the ILGWU members as 'scum'.

"A substantial number of the employees who joined the ILGWU were laid off or discharged shortly after joining. <sup>25</sup> \*\*\* Yarnell was discharged in July 1934 although she had worked for the respondent since December 1924. Within a few months all except one of the employees who attended the dinner were either laid off or discharged. As a result of these lay offs or discharges the ILGWU on December 6, 1934, filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the ILGWU: \*\*\*

"In the latter part of 1934 and the first part of 1935 all the other employees who were known to have joined the ILGWU were transferred from the main factory of the respondent to a temporary branch which was used by the respondent during the busy season. When the rush of work was over and the use of the temporary building discontinued the employees, most of whom had several years service, were laid off. Employees working in the main factory with less service were retained. \*\*\*\*

"As a result of this sequence of events the employees became hesitant to join the ILGWU and those who had joined denied their membership when questioned. Employees who had not joined were even careful not to talk [fol. 34] to those suspected of ILGWU membership for fear of some discrimination with respect to their jobs.

"In February 1935, Martha Gray, in charge of the respondent's outlet store, and Florence Strickland, in charge of the pattern department, formed an organization among the respondent's employees known as the "Nelly Don Loyalty League". The initial step in its organization was a meeting at the home of Gray, attended by approximately



50 employees representing the various sections of the factory. Within the next three days membership cards were circulated and were signed by substantially all the employees. Florence Strickland, in circulating the cards, stated 'that Mrs. Donnelly (Nell Quinlan Reed) would close her doors before she would have a union shop, and (employees) should sign these cards to keep — (their) jobs and keep (them) in work because she would close the doors.' A statement was circulated along with the membership cards stating that: \*\*\*\*

"Florence Strickland refused to allow Virginia Stroup, who was president of the ILGWU local, to sign a membership card because she belonged to 'another organization.' Similarly Lena Allison, an instructor, refused to allow Frances Reidel a card on the ground that she was an ILGWU member. Following the signing of the cards, on February 8, 1935, a mass meeting of all employees was held during working hours on the second floor of the building occupied by the respondent's plant, presided over by Martha Gray, who explained the meaning of the word 'loyalty'.

"Meetings were regularly held on the second floor of the building.<sup>27</sup> The meetings were announced by a notice to the instructors transmitted either by Mrs. Werry, factory manager, or by the respondent's switchboard operator, calling each section and the instructors in each section notifying the employees to attend the meeting. Each of the sections in the plant had a representative elected by the employees in the section to represent them in the League. These representatives were chosen by passing a sheet of paper among the employees in each section while at their machines, on which nominations were made and then repassing the same sheet around in a similar manner so that each employee could [makr] his vote on the sheet. Virtually all the respondent's supervisors, including Mrs. Reeves, Mae Hyde, Dewey Atchison, Martha Gray, and Florence Strickland were members of the League. The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Nell Quinlan Reed.



[fol. 35] "It is clear from the events cited above, that prior to the effective date of the Act, the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the ILGWU. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the ILGWU did so with a great deal of hesitancy. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant the renunciation of the Union. Membership and influence in the League enabled the respondent to foster an organized employee resistance to outside unions. Membership of management representatives and supervisory employees, in the League, convinced the rank and file of the respondent's employees that the League was an organization approved by the respondent to which they must give their support, and that they must correspondingly refrain from joining or assisting the ILGWU which the League so consistently opposed.<sup>28</sup>

(Footnote 28) "Since the League was set up as a rival to the ILGWU, the League cannot be held out as a 'purely social organization', as contended by the respondent. \*\*\*\*

\*\*\* \* \* This contention (i. e. that evidence prior to passage of the National Labor Relations Act) fails to recognize that the League continued in existence after effective date of the Act. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted for the purpose of evaluating the significance of events occurring after such date.<sup>29</sup>

"Since the League was inspired by the respondent and fully supported by its representatives from its inception, the undersigned is convinced that the respondent thereby forcibly impressed upon its employees its anti-union sentiments.

"Further, the League was dominated and controlled by the respondent, and prior to the effective date of the Act, the respondent used it to prevent its employees from joining the ILGWU or any other outside labor organization."<sup>30</sup>

for the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence; or by any findings supported by the evidence; are contrary to competent and material evidence [fol. 36] offered by petitioner and excluded by the trial examiner and contrary to the offers of proof made by petitioner and rejected by the trial examiner; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against petitioner or support any of the trial examiner's conclusions or recommendations adverse to petitioner, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the trial examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the petitioner was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the trial examiner against petitioner and his non-judicial attitude toward the evidence; because the trial examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to petitioner; because petitioner is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on petitioner; and because petitioner has, for each and all of the foregoing reasons, been denied [fol. 37] a fair trial and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

The trial examiner erred in his findings, statements and conclusions contained in Part III, C of the Intermediate Report (pp. 21-25) under the heading "Events prior to April 27, 1937; interference, restraint, and coercion", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

"Following the lay off and discharge of the ILGWU members in late 1934 and early 1935, the organization of the League in 1935, and the inability of the ILGWU to carry to a successful conclusion the case under the NRA, due to the decision declaring the Act unconstitutional, labor relations at respondent's factory remained in a quiescent condition until March 1937. During this period the ILGWU abandoned temporarily its efforts to organize the factory. \* \* \* In some instances, instructors brought new employees notices that they were eligible to membership, directed them to the desk of the League president and later brought them their League pins.

\* \* \*

"\* \* \* With six exceptions the instructors and thread girls did not sign when the petition went through their respective section, although they knew the petition was being circulated. \* \* \* Two of these individuals, later signed for fear of losing their jobs, their names being later erased.

"\* \* \* Thereafter, as the result of arrangements made between Mrs. Reed and a newspaper representative, a picture of the employees presenting the pledge was taken and appeared on the front page of the Kansas City Star, accompanied by the statement that Mrs. Reed was going to place the pledge in the cornerstone of the new building she was planning to erect.

"Mrs. Reed shortly thereafter expressed to her office manager, Marguerite Keyes, a wish that all employees, not [fol. 38] merely factory employees, would sign the petition. Keyes requested an employee in her department, Pauline Shartzter, to circulate the pledge of refusal to acknowledge any labor organization, among all the employees who had theretofore not signed. As a result,

everyone in the plant including the supervisory employees, watchmen, porters, maids and stenographers, indeed every employee except the three heretofore mentioned, signed the 'loyalty' pledge. The instructors and thread girls who signed when the petition first went through their section, signed again a second time on the same page with the other instructors and thread girls. The additional pledge was thereafter presented to Mrs. Reed.

"Under all the circumstances above related the undersigned finds that the respondent, by permitting Mary Sprofera and Inez Warren, and requesting Pauline Shartzter to circulate the pledges in the factory during working hours and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the ILGWU,<sup>31</sup> and thereby interfered with, restrained, and coerced them in the free choice of a collective bargaining agent.<sup>32</sup>

(Footnote 32) "It may be noted that the circulation of this pledge, coincidental with the renewed organizational activities of the ILGWU among the respondent's employees, bears striking similarity to the circulation of the League membership cards and anti-union statements by the respondent 2 years earlier, soon after the ILGWU had initiated its campaign among the employees. In each instance the pleas to the employees to be 'loyal' to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the ILGWU to organize the respondent's employees.

....

"A meeting of all the respondent's employees took place during working hours<sup>33</sup> on the afternoon of March 18, 1937, on the second floor of the building housing the respondent's plant.<sup>34</sup> Employees were notified orally by their instructors that they were to attend the meeting, the instructors having been notified by either Mrs. Wherry or over the factory telephone system. Most all of the supervisory force were in attendance at the meeting, including Ella Mae Hyde, Martha Gray, and Elizabeth Reeves, the instructors and the thread girls. Rose Todd, with the assistance of Hobart Atherton, both of whom were officials of the League and supervisory employees, called the meeting and Todd presided. Chairs for the meeting were rented from the Kansas [fol. 39] City Rental Chair Company under the name of

the League. From these facts, the undersigned concludes, despite the denial of Rose Todd<sup>35</sup> that the meeting was sponsored by the League and its officials.

(Footnote 33) " \*\*\*\* Evaluating the evidence in its entirety, the undersigned is not persuaded by the testimony adduced by the respondent. A finding favorable to the respondent's position would necessitate the acceptance of testimony which is contrary to the weight of the evidence. The indefinite and routine testimony of respondent's witnesses with their lack of knowledge of details and the mutually corroborative testimony of Board's witnesses, supported by other evidence, that operators attended meetings in their uniforms, that employees went to the meetings in groups and that no definite time was given in the call for the meetings, although the hours of work were staggered and the operators were working overtime, convinces the undersigned that the meetings of March 18 and April 27, 1937, were held during working hours.

(Footnote 34) " \*\*\*\*\* Employees had regularly attended Loyalty League meetings and company style shows held on these floors and did not know whether they were leased by the respondent.

"Rose Todd made a few opening remarks, after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the ILGWU under date of March 9, 1937, requesting a conference. The letter was read to the employees. Mrs. Reed then made a talk in which she expressed her pleasure at receiving the 'loyalty' pledge which had been presented to her on March 2, told the employees that the respondent was an institution to be proud of, that it had taken care of its employees by keeping the factory in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence, that the ILGWU was alleged to have made against employees of the company, and promised protection against such violence. Finally she directed her remarks to the question of unionization of the factory. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated she would close her factory before she would permit it to be unionized and that she would not allow 'Dubinsky or any other sky to tell her how to run her business'. According to respondent's version, Mrs. Reed stated 'Neither Dubinsky or any other buttinsky is going to intimidate me or the company into forcing you to join the International (ILGWU) against your will'. The under-



[fol. 40] signed does not consider it necessary to resolve the precise conflict in this testimony since the undersigned's view, Mrs. Reed's own version of her speech at the March 18 meeting, and the events which took place there, constituted an unfair labor practice. The meeting was sponsored by the League, which is controlled by the respondent, and was attended by most of the respondent's supervisory employees. Through the presence of supervisors and the sponsorship of the League which had for its purpose the exclusion of outside union organization from the factory, the employees must inevitably have been aware of the anti-union character of the meeting and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the ILGWU but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the ILGWU the respondent seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed's remarks indicated that the ILGWU was the common enemy of both the respondent and its employees and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labeled David Dubinsky, president of the ILGWU a "butinsky" who was seeking to force the respondent's employees to join that Union. \*\*\*\*\* against the background of the respondent's widely publicized hostility to the ILGWU and the past repeated reminders to the employees that 'loyalty' to the respondent demanded repudiation of outside union organizations, the undersigned is convinced that Mrs. Reed's remarks <sup>36</sup> made it plain that the respondent's attitude toward unionization had not changed and the membership of any of the employees in the ILGWU was not to be tolerated.

(Footnote 36) "\*\*\*\*\* The undersigned cannot agree, however, that the reference to the employees' rights rendered them wholly free with respect to joining unions. On the contrary, in view of the respondent's past hostility to labor organizations, the undersigned believes that the employees could not fail to be discouraged from joining the ILGWU or any other labor organization.

"The undersigned finds that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's

talk at said meeting the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

\*\*\*\*\* A few minutes after 8 o'clock while she (Sylvia Hull) was working at her machine on the 8th floor of the [fol. 41] plant, two groups of employees—each consisting of 12 or 20 persons—successively gathered at her machine. They demanded to know what authority she had to represent them at the ILGWU convention. Some of the operators stood on top of nearby tables, others sang Loyalty League songs. They told Hull that they would not allow her to belong to the Union, and demanded that she surrender her League pin, which she refused unless they returned to her the cost of the pin. Shortly thereafter, the operators returned, gave Hull 35 cents and she surrendered the pin. Lena Allison, the instructor in charge of Hull's section, was present throughout the demonstrations, but did not order the girls back to work or take any action of any kind; Mary Bogart, in charge of the dividing section, was present and pointed Hull out to some of the demonstrators. \*\*\*\* Hyde thereupon took her down to the office on another floor. \*\*\*\* According to Hull's testimony, which is undenied, Hyde told her she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee-identification badge and Hull left a telephone number through which she might be reached. 37

"Later, during the same morning on which the above described incident occurred, Fern Sigler, an operator who had displayed on that day for the first time her ILGWU membership pin, was subjected to similar demonstrations. The employees surrounded Sigler's machine and sang songs, derided her, took her League pin from her and shouted 'get up and go home, we don't want you in here'. The demonstrations subsided when Baty, factory manager, accompanied by Rose Todd ordered Sigler from her machine to the office. As Sigler left the floor the operators shouted, 'we are not going to work as long as she remains here'. When Baty insisted on sending Sigler home she argued with him that she had a right to join the ILGWU and it was the employer's duty to control the employees.

Baty replied 'We don't go in for the Wagner Act, we are just running our business here not a law office.' Todd then stated 'We are going to run an open shop as long as the majority feels that way.' After the conference participated in by Baty, Hyde, Todd and Sigler, Sigler was sent home. Baty promised to talk to the operators and 'quiet them down' and to call her back when the unrest had subsided. Despite his promise Baty admitted at the hearing that he did nothing to allay antagonism toward the ILGWU in the plant. <sup>38</sup>

"The undersigned finds that the respondent approved of and encouraged the (Hull and Sigler) demonstrations and took advantage of them to reveal once more to the [fol. 42] employees its hostility to the ILGWU and its support of anti-ILGWU activities. Further the undersigned finds that by such acts the respondent interfered with, restrained, and coerced its employees of the rights guaranteed by Section 7 of the Act.

"The undersigned further finds that by using the League and its officers as hereinabove described for the purpose of impeding and preventing the organization of its employees by the ILGWU, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. <sup>39</sup>

(Footnote 39) \*\*\*\*\* The respondent condoned, approved and encouraged these demonstrations and made no sincere effort to check the demonstrators. Neither did it in any way discipline the demonstrators who had disrupted the normal operation of the factory nor did it take any steps to make it possible for these employees to return to their work in the factory unmolested. No deductions were made in the wages of time workers who participated in these incidents. \*\*\*\*\*

for all the reasons stated in the foregoing Point No. 15.

#### 16-a.

The board erred in its decision and order, in making each and all of the findings and conclusions set forth in assignment of error No. 16 herein, for the reason that none of the alleged statements therein referred to, or remarks therein referred to, were coercive upon petitioner's employees but all were within the rights and privileges of free speech guaranteed by the First Amendment to the

Constitution of the United States and such findings and conclusions and the order and decision of the Board based thereon constitute an infringement upon the right of free speech guaranteed by said Amendment.

16-b.

The Board erred in basing its findings, conclusions, decision and order upon the statements or remarks appearing in the record and alleged to have been made by officers or employees of the Donnelly Garment Company, for the reason that if such remarks or statements were made, they were not coercive but were within the rights or privileges of free speech guaranteed by the First Amendment to the Constitution of the United States, and such findings, conclusions and decision that said alleged statements or utterances constitute a violation of the National Labor Relations Act, constitute an infringement upon the right of free speech guaranteed by said Amendment.

16-c.

That if the National Labor Relations Act be so construed as to make or hold any of the alleged statements or remarks by the officers or employees of the Donnelly Garment Company, including said alleged remarks by Mrs. Reed at the meeting of employees on March 18, 1937, a violation of the National Labor Relations Act (as it is construed by the Board in its order), such holding would be and is in contravention of the First Amendment to the Constitution of the United States guaranteeing the right of free speech and said Act is unconstitutional, and the Order and Decision of the Board herein are void.

17.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate Report (pp. 26-28) under the heading "Domination and interference with the formation and administration of the DGWU and contribution of support; interference, restraint, and coercion", and to sub-heading "1. The formation of the DGWU", and particularly the following portions thereof, and the Board erred in adopting said

findings, statements and conclusions and of each of same, to-wit:

"Shortly after the March 18 meeting a committee, which had been appointed at the close of that meeting, consisting of Rose Todd, Loyalty League President, and the representative of the respondent, Hobart Atherton, an officer of the League and a supervisor, and Sally Ormsby, employed Tyler, an attorney. \*\*\*\*\*

"On April 27, 1937, a mass meeting of all respondent's employees was held during working hours, <sup>40</sup> on the second [fol. 43] floor of the building in which the respondent's plant was located. <sup>41</sup> Notice of the meeting was given to the employees through their respective instructors who had been notified by Mrs. Wherry, or over the factory telephone system. Instructors and thread girls attended the meeting along with the operators in their sections. Chairs for the meeting were rented in the name of and paid for by the Loyalty League.

"\*\*\*\*\* Her (Rose Todd's) opening remarks indicated that she regarded the meeting as a part of the series which preceded it for she stated she hoped, 'this meeting is going to be as enthusiastic as our last one was' and explained that she had called the meeting 'as chairman of the committee of employees.' <sup>42</sup> Todd stated that she had consulted two lawyers, Mr. Gossett and Mr. Tyler, whom she had known for years, and they advised forming a plant union. She explained that the Loyalty League, being a purely social organization, would not take care of the situation; that another organization was necessary to give them representation to definitely confer with the proper representatives of the respondent at times when they felt that it was necessary. She pointed out, that a union would have to be formed if they were to successfully resist attempts of organization by an outside union. She then told the employees that the new organization would be called the 'Donnelly Garment Workers Union' and although she was distressed as they were at having to use the word 'union' it seemed to be necessary.

\*\*\*\*\*

(Footnote 43) "The bylaws indicate the purpose of the DGWU was in part the same as that of the Loyalty League which, in the words of Rose Todd, had become inadequate to give the employees the 'protection' they needed. \*\*\*\*\*



"The facts as related above, make it plain that the organizational meeting of the DGWU was planned, organized and under the complete control of respondent's representatives. Under all the circumstances the undersigned concludes and finds, that the concept of an independent union originated with respondent's supervisory employees and further, that the respondent through the activities of its supervisory employees gave approval, and lent assistance and encouragement to the DGWU.

(Footnote 44) \*\*\*\*\* This same group (Todd, Atherton and Ormsby) had been appointed as a committee at a meeting sponsored by the Loyalty League on March 18 for the same purpose. The ledger sheets of the Kansas City chair rental company show the chairs were rented by the 'Nellie Don' [fol. 44] Loyalty League to be used on that date and cancelled check of the Loyalty League shows the League drew a check in favor of the chair rental company in payment therefor. The respondent's telephone operator called on the interdepartmental telephone system each department of the building and gave notice that Todd was calling a meeting of the employees on the second floor. \*\*\*\*\* Though it is contended that the \$500 retainer fee was in payment only for advice concerning a projected injunction suit against the ILGWU for the protection of the respondent's employees, the undersigned is convinced that the fee covered Tyler's services in connection with the organization of the DGWU, the proposed injunction suit having been rejected as a method of protection. \*\*\*\*\*

"From all the circumstances above related the undersigned finds that the meeting of April 27 was sponsored and financed by the Loyalty League through Todd, Atherton and Ormsby, and further that the League financed the employment of Tyler, paid him a retainer fee of \$500 and that the fee covered the cost of his services in connection with the formation of the DGWU and the drafting of its Bylaws."

for all the reasons stated in the foregoing Point No. 15.

## 18.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, thereof, under the subheading "2. Membership and participation by other supervisors in the DGWU" thereof, (pp. 29-30); and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"In addition to Todd's and Atherton's membership and participation in the DGWU as representatives of the management, the instructors and thread girls all attended the

meeting of April 27 and signed cards for membership in the DGWU. Dewey Atchison, production engineer, joined but resigned July 14, 1937. The minutes of the meeting show that instructors and thread girls and others closely allied with the management regularly attended and participated in the meetings. ...

.....

(Footnote 45) "This payroll (1938) heading covers the executive force of the factory, including heads of departments such as factory manager, head of the retail store, personnel manager, and Mrs. Wherry who was variously described as factory manager and head of instructors.

[fol. 45] "The election in April, 1939, repeated in many respects the occurrences of the previous year. However, this time Rose Todd herself appointed the nominating committees without going through the formality of nominations and unanimous elections. Hilda Richmond, whose closeness to management is indicated by appearance of her name on the 'Buying Record's' payroll " was named by Todd as chairman of one of the committees and Harry Grogan whose name appeared on the payroll under "Instructors and Floor ladies" was a member of the other. These two nominating committees each brought in slates naming Todd chairman; Jack McConaughy treasurer, Marjorie Green, secretary, and Walter Higgins representative of mechanics. Again the election was by an open standing vote.

"Heath Cowan, in charge of the receiving department; Marvin Price, in charge of building maintenance; and Ortense Root, in charge of the sample department were members of the DGWU and, as shown by its minutes, attended meetings and participated in its affairs. Ted Scoles, in charge of the cutting department; Lena Tyhurst, in charge of the inspection department; and Mary Bogart, in charge of the dividing department were also members of the DGWU. At various times the question was raised by employees as to whether department heads and instructors should have the right to be members of the DGWU and attend and participate in its meetings. However, Todd's statement of the DGWU policy that all employees except the executives Mr. Keyes, Mrs. Keyes, Mr. Green, Mr. Baty and Mrs. Hyde were eligible remained in effect. Employees, nevertheless, at various times expressed the view

that the presence of such persons at meetings excluded them from speaking freely of their complaints. In a meeting of the DGWU Group Chairmen, Hobart Atherton when he stated, 'I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote,' realized the danger of participation by supervisory employees in the affairs of an organization devoted to the improvement of the employees economic relationship with the employer.

"Inasmuch as the respondent through its supervisory employees' membership and participation in the activities of the DGWU, continued its control and direction of that organization, the undersigned finds that respondent is responsible for their activities, and that they were acting for and in behalf of the respondent"

for all the reasons stated in the foregoing Point No. 15.

#### 19.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate [fol. 46] Report (pp. 30-32) under the heading "3. The contracts; closed shop, check off and piece work rates", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

" \*\*\*\*\* Tyler prepared a contract which was accepted by the respondent without substantial change. Terms of the supplemental agreement were never submitted to the DGWU membership for approval before or after its execution, although it set the employees wages for a period of one year with a provision for an automatic extension. \*\*\*\*\* Todd explained that the ILGWU had announced that it was seeking a \$16 weekly minimum in the garment industry, and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the ILGWU to organize the respondent's employees. The respondent acceded to this demand. \*\*\*\*\*

"In August or September 1937 the company agreed, at the request of the DGWU, to a check off of the monthly dues of the members. Employees signed a card prepared

and distributed by the respondent [agreeing] to permit the dues to be checked off at the end of each month. Pursuant to this agreement the respondent submits to the DGWU a memorandum showing the number of employees on the payroll during the month and a check covering their dues. The DGWU issues no receipts, keeps no record of individual dues payments and has no means of knowing what individuals paid dues during any month. The General Chairman or Treasurer of the DGWU were unable to state at the hearing what proportion of each month an employee must work to entitle the DGWU to collect the dues from the respondent. The checks turned over for each month subsequent to July 1937 range from about \$250 to \$325. The amount deducted from each employee appears on the employees' respective check stub. Although the DGWU has never furnished the respondent with a list of its members, every employee of the respondent, upon the assumption that all employees under the closed shop are eligible to belong to the DGWU, except the salesmen whose dues the company's decline to check off, authorized the checking off of the dues.

“..... Nichols is a supervisory employee and Spallito her assistant, both of whom are employed by the respondent for the purpose of establishing for it the piece work prices paid the employees. Nichols was described, by Mrs. Hyde, as an ‘executive’ of the respondent, and admittedly has final authority in setting piece work prices in the first [fol. 47] instance, and of adjusting subsequent complaints of operators that the price set is too low. ....

“Thus the same persons who set rates on behalf of the respondent in the first instance are also representatives of the DGWU for the purpose of protesting and negotiating in regard to those rates in behalf of the DGWU and the employees.

“The respondent's immediate recognition of the DGWU and its ready acquiescence to a closed shop and check off through the medium of an organization which allowed it to retain control of the piece work rates, when viewed in the light of respondent's persistent hostility to independently functioning unions clearly reveals its determination to prevent the employees from enjoying the rights conferred

upon them by the Act, by forcing them to become members of an impotent collective bargaining agency to which, by its closed shop and check off, it had given assurances of financial stability."

for all the reasons stated in the foregoing Point No. 15.

## 20.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate Report. (pp. 33-35) under the heading "4. Respondent's contribution of support to the DGWU", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

"In addition to the holding of the organizational meeting of the DGWU on respondent's time <sup>48</sup> the succeeding three or four membership meetings were likewise held during working hours. \*\*\*\*\* Although the DGWU met on the property under lease by the respondent monthly from May 1937 on, it was not until November 1937 that the question of paying rental was raised. \*\*\*\*\* It is plain that prior to November, 1937, rent free use of the respondent's premises was contemplated and that the retroactive payment of rent was an afterthought. Rose Todd the General Chairman, twice announced in meetings of the DGWU that such use of the respondent's facilities was entirely proper. Meetings of the Group Chairmen, who composed the executive committee of the DGWU, prior to May 1938, were held in the office of Beulah Spilsbury, in charge of the designing department and thereafter in the auditorium on the first floor. No rental was ever paid for the use of this property. <sup>49</sup>

(Id. 48) (Footnote 49) "The DGWU's treasury book shows only two payments to the respondent for use of space. Both of these were for meetings of the entire membership, as may be seen from the testimony of McConaughy concerning the first of these payments and the fact that the second payment was for 'for 13 meetings' one less than the number of general membership meetings as shown by the minutes of the DGWU to have taken place between the two payments.

"The general meetings of the DGWU and the meetings of the Group Chairmen were called through the respondent's facilities, either by the use of the respondent's inter-



departmental telephone system or by sending a so called I.D.M. to each department of the factory through the respondent's regular messenger service. Announcement of the meeting over the respondent's factory telephone system was accomplished by Todd notifying the telephone operator to call each department.<sup>50</sup> Each section has a telephone, and it is the duty of the instructor or thread girl to answer the phone and convey any message that might be given either to the employees generally if it was a general meeting or to the specific employee in question if it was a Group Chairmen meeting. The interdepartmental telephones were not available to the employees generally and could only be used for calls by supervisory employees pertaining to official business. An I.D.M. is the respondent's term for interdepartmental memoranda. When Todd wished to call a meeting of the employees generally, or of the Group Chairmen, she regularly prepared a notice on the company's I.D.M. paper which was sent to each section of the factory by the respondent's messenger service. Upon the arrival of the I.D.M. in any section, it was the duty of the instructor or thread girl to read the I.D.M. and pass it to the operators in the section.

"Miss Todd also utilized the I.D.M. system for collecting assessments and sending instructions pertaining to DGWU business to the members on the respondent's time.<sup>51</sup> The DGWU receives its mail at the factory through respondent's messengers and freely uses the factory bulletin board.

"Piece work operators who served as Group Chairmen or officers were paid by the respondent for the time lost at work while attending DGWU business, the time workers being allowed to take time from work with no deductions from their pay.

"Rose Todd was a full time employee of the respondent. While a request was made to Mrs. Reed immediately after the formation of the DGWU that it should pay part of her salary, she continued to receive a full salary of \$130 a month from the respondent and in addition thereto received \$65 from the DGWU.

[fol. 49] Despite receiving her full salary from the respondent, the nature of the work given her by the respondent to perform permitted her to devote as much time as she desired to the DGWU business without deduction from her pay. Thus she carried on the business of the DGWU, representing 1300 or more employees, during the respondent's normal working hours. Soon after formation of the DGWU at the respondent's Kansas City plant, Todd went to the respondent's temporary auxiliary plant at St. Joseph, Missouri, to organize the employees in that factory. She was absent from her employment about a half day without a salary deduction.

"At a meeting on May 11, 1937, Rose Todd announced that 'our (DGWU) work will be conducted' at a desk on the ninth floor of the plant and that she could be reached on union business at 'any time necessary'. Todd's desk was the DGWU's only office. Its records were kept there in a file belonging to the respondent and its business was regularly transacted by employees who went there for that purpose. The check off cards which were printed and distributed by the respondent were signed and turned in at this desk over a two weeks' period by employees who came there from all over the factory. Membership cards of those who were absent from the April 27, 1937 meeting, or of new members were signed and left at this desk. Grievances of members were reported to Todd during the working day and she attended to them during her hours of work. She collected money for the DGWU on the respondent's time and directed the DGWU representatives to do the same. When Todd left on her vacation in December 1937, she informed the Group Chairmen that a substitute, Miss Riddle, would be at the desk from 11 a. m. to 12:45 each day—much longer than the usual half hour's lunch hour—to transact DGWU business.

...

"It is apparent from the facts set forth above, and the undersigned finds, that the respondent has contributed a large measure of support to the DGWU."

for all the reasons stated in the foregoing Point No. 15.

## 21.

The trial examiner erred in his findings, statements and conclusions contained in and under the heading "Summary and conclusions" (pp. 35-37), and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

[fol. 50] "From the foregoing facts, conclusions, and findings, it is clear that, notwithstanding the contention by the respondent and the DGWU that the DGWU's formation was the result of the employees' own choice of a collective bargaining representative, the respondent has not permitted the employees to freely exercise that right of self-organization free from employer influence and domination.

"Prior to the effective date of the act the respondent adopted a policy of opposition and hostility to labor organizations generally and to the ILGWU specifically. In furtherance of this policy, the management made it plain to the employees that 'loyalty' to the respondent was synonymous with the rejection of membership in any labor organization. To solidify its purpose, the respondent inspired and dominated the Loyalty League, which had for its primary purpose the frustration of the efforts of the ILGWU to organize the employees. In 1937, when the ILGWU announced a renewal of its efforts to organize the respondent's employees after the Act had been held constitutional, the respondent through the medium of its Loyalty League and supervisory employees formed the DGWU to prevent its employees from selecting any 'outside' labor organization as their representative. It was the League's officers and representatives of the management, Rose Todd and Hobart Atherton who hired the attorney who planned the DGWU and wrote its bylaws. It was the League which borrowed \$4,000 at the bank on the security of its members, including Rose Todd and other supervisory employees, with which to pay a retainer fee of \$500 to the attorney, a part of which retainer was for advice and services in connection with the formation of the DGWU. The meeting of April 27, 1937, at which the DGWU was formed was sponsored and financed by the

League. Rose Todd, at the time President of the League, directed and dominated the course of the meeting. The employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure provided by the respondent they emerged from that gathering with a labor organization free from employer domination does not persuade employees to join its ranks so rapidly. Like the League, membership in the DGWU includes a large number of the respondent's supervisory employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd, General Chairman of the DGWU, the respondent has retained complete control of that organization.

"The record conclusively shows that the respondent contributed substantial support to the DGWU. The organization has no office or headquarters of any kind apart from the respondent's factory. Respondent's facilities have been freely used in carrying on the business of the DGWU, and while the respondent contends it had no knowledge of the use of its various facilities, the practice has been so persistent and frequent that the undersigned is of the opinion that such a contention is impossible of belief and finds that the respondent had knowledge of these activities.

[fol. 51] "Rose Todd is allowed to take whatever time during working hours that is necessary for the handling of DGWU business without any deduction from her salary and makes a practice of taking up its business at any time during the day. Also Todd, as President of the League and General Chairman of the DGWU, was accorded almost complete freedom to roam through the factory engaging alternately in performing duties in connection with the factory's operation and handling matters relating first to the Loyalty League and then to the DGWU without interference or objection from the respondent. These facts demonstrate that the respondent has permitted and encouraged Todd to make use of the respondent's time in conducting the business of the DGWU. This necessarily conveys to the employees of the respondent its approval of the League and the DGWU. That the respondent lent

encouragement and assistance to the DGWU, becomes even more evident when its cooperative attitude toward the DGWU is compared with the hostility with which it met the efforts of the ILGWU to organize the employees.

"The completeness of the respondent's domination becomes more clear, as shown by the personnel of the DGWU committee for the adjustment of piece work rates. Two of the three of this committee are persons employed by the respondent to set piece work rates in the first instance and when one of these two, Lulu Nichols, is the respondent's authority on the finality of the rate, the result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any means of independent collective bargaining with regard to piece work rates, ordinarily a matter jealously guarded for the promotion of the employees.

"Negotiations between the respondent and the DGWU with respect to the provisions in the Articles of Agreement signed on May 27, 1937, were completed within a few hours; and signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed shop, she made no protest when the DGWU made such a proposal. She stated: 'I understand that (a closed shop) is very essential to industrial peace'. The closed shop was granted and membership in a labor organization of the respondent's choice became obligatory upon the employees, buttressed with a check off of dues, to guarantee financial stability to the organization that the respondent initiated and thereafter controlled.

"On all the evidence, the undersigned finds the respondent dominated and interfered with the formation and administration of the DGWU and contributed support thereto and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[fol. 52] "The DGWU is not and never has been the lawful representative of the respondent's employees for the purpose of collective bargaining in regard to the rates of pay, wages, hours of employment, and other conditions of employment. Under these circumstances, the undersigned finds that the contract, supplemental wage agreement, any



extension, renewal, modification or supplement thereof, and any superseding contract between the respondent and the DGWU are void and of no effect. Independent of this finding of the invalidity of the above mentioned contracts, the closed shop provision is invalid, having been made with a labor organization established, maintained, and assisted by unfair labor practices, therefore, the closed shop provision does not fall within the proviso of Section 8.(3) of the Act.

"The undersigned further finds that the respondent, by entering into a contract containing a closed shop provision with the DGWU, discriminated in regard to the hire and tenure and other terms of employment of its employees, thereby encouraging membership in the DGWU and discouraging membership in the ILGWU, and that it thereby interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed them in Section 7 of the Act.

"In addition, the undersigned concludes and finds that the respondent, by using the dominated Loyalty League to impede and prevent the employees from choice of labor organization, by permitting the circulation and requesting the employees to sign the pledge of March 2, 1937, and by the speech of Mrs. Reed at the March 18, 1937 meeting, has in these and other respects set forth above interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act."

for all the reasons stated in the foregoing Point No. 15.

## 22.

The trial examiner erred in his findings, statements and conclusions contained in Part III, E, of the Intermediate Report (pp. 37-39) under the heading "E. The alleged discharges" and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to wit:

"The undersigned has previously described the anti-union demonstration by employees against Hull on the morning of April 23, 1937, which the undersigned found

was condoned and encouraged by the respondent. During the demonstration, Mrs. Hyde, respondent's employment manager removed Hull from her machine and told her [fol. 53] that she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee identification card which was necessary for admission to the factory. When Hull asked how she would get back into the plant, Hyde told her that she would come down to the door and admit her. . . .

" . . . This contention was based on Hull's statement made when a number of the anti-union demonstrators demanded that she go home, and also from the fact that she did not seek to return. However, when Mrs. Hyde told her she would have to leave the plant, Hull refused to quit her employment but agreed to go home for the day. These facts plainly show that Hull did not voluntarily give up her position with the respondent and only acquiesced in a one day lay off under pressure from the respondent. Furthermore, from the fact that Hyde agreed to call her indicates that the respondent did not consider Hull's statement a resignation of her employment.

"The undersigned finds that Sylvia Hull did not voluntarily leave the employment of the respondent but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the ILGWU. The undersigned therefore finds that the respondent discriminated in the regard to her tenure of employment, thereby discouraging membership in the ILGWU and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. . . .

"Fike's testimony as to conversations with respondent's agents and an alleged discriminatory lay off, if credited, provides a foundation which would afford an inference that her relationship to Sigler and her union membership was in part at least a motivating reason for the refusal of the respondent to reemploy her after she left on a vacation which was unauthorized. . . .

for all the reasons stated in the foregoing Point No. 15.

## 23.

The trial examiner erred in his findings, statements and conclusions contained in Part IV of the Intermediate Report (p. 39) under the heading "The effect of the unfair labor practices upon commerce", and the Board erred in adopting said findings, statements and conclusions, that respondent engaged in the activities set forth in Section III of the Intermediate Report, for the reason that same [fol. 54] are not supported by the evidence or by any reasonable inferences to be drawn therefrom, and for each and all the reasons heretofore set forth in the foregoing Point No. 15. Petitioner does not dispute that it was engaged in interstate commerce as set forth in the stipulation concerning said matter filed in this proceeding.

## 24.

The trial examiner erred in his findings, statements and conclusions contained in Part V of the Intermediate Report (pp. 39-40) under the heading "The remedy", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to wit:

"Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

"The undersigned, having found that the respondent has dominated and interfered with the formation and administration of the DGWU and contributed support to it, in order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, will recommend that the respondent withdraw all recognition from the DGWU as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely to disestablish it as such representative.<sup>53</sup>

"The undersigned, having also found that the respondent entered into an unlawful contract with the DGWU providing for a closed shop, and in addition, agreed to the deduction of DGWU dues from the employees' wages as an integral part of the respondent's campaign to deny the employees the rights guaranteed them in the Act, will recommend that the respondent cease and desist from giving effect to the contract of May 21, 1937, and to the supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification or supplement thereof, or any superseding contract or agreement which may now be in force. Nothing in this recommendation [fol. 55] should be taken, however, to require the respondent to vary those wages, hours, and other substantive features of its relations with the employees themselves, if any, which the respondent established in the performance of such contracts as extended, renewed, modified, supplemented and superseded.<sup>54</sup> The undersigned will also recommend that the respondent cease and desist from giving effect to any check off agreement with the DGWU. The undersigned is of the opinion that, under the circumstances of this case, the respondent should be required to reimburse each employee for any amounts which the respondent has deducted from the wages of the employee for dues and assessments in the DGWU. The respondent concluded a closed shop contract with the DGWU, a dominated organization, thus compelling its employees to become and remain members of the illegal organization. The check off agreement, a device by which the respondent assured the financial stability of the dominated organization, could, as practiced, no more be avoided by the employees than could the compulsory membership requirement. The undersigned finds that the monies thus deducted from the wages of the employees constituted the price of retaining their jobs, a price coerced from them for respondent's purpose of supporting and maintaining the organization which respondent had dominated in order to thwart bona fide representation. The undersigned further finds that, as a result of the imposition of the illegal closed shop and check off requirements, the employees suffered a definite loss and deprivation of wages equal to the amounts exacted from them for illegal purposes. The undersigned also finds that in these circum-

stances, the propriety of a recommendation requiring reimbursement of dues is particularly applicable, if the unfair labor practices are to be fully remedied and the purposes and policies of the Act are to be completely effectuated by restoration of the status quo. Hence, the undersigned will recommend that respondent reimburse its former and present employees for the amounts deducted from their wages for dues and assessments in the DGWU.<sup>25</sup>

"The respondent's entire course of conduct, including its many and varied forms of interference, restraint, and coercion, its domination and support of the DGWU, and its discriminatory discharge of Sylvia Hull discloses a fixed purpose on the part of respondent to defeat self-organization and its objects. Because of the respondent's unlawful conduct in the past and its underlying purpose, the undersigned is convinced that there is a real danger of the respondent engaging in other related unfair labor practices proscribed by the Act in the future. The preventative purpose of the Act will be thwarted unless the undersigned's recommendation is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce, and [fol. 56] thus effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing the rights guaranteed in Section 7 of the Act."

for all the reasons stated in the foregoing Point No. 15.

## 25.

The trial examiner erred in his findings, statements and conclusions contained in each of paragraphs numbered 2, 3, 4 and 5, under the heading "Conclusions of Law" (p. 41) of the Intermediate Report, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"2. R- dominating and interfering with the formation and administration of Donnelly Garment Workers Union



and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

"3. By discriminating in regard to the hire and tenure and terms and conditions of employment of Sylvia Hull and other employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

"4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

for each and all of the following reasons, to-wit:

1. Because the evidence does not show that the respondent has engaged in, or is engaging in, any of the unfair labor practices referred to in said paragraphs and each of same.

2. Because same are contrary to the evidence and contrary to the law under the evidence.

3. Because same are not supported or justified by the evidence or any inferences which may be properly drawn [fol. 57] therefrom, or by any findings of fact by the Trial Examiner which are supported by the evidence or any reasonable inferences to be drawn therefrom.

4. Because same are partisan, biased, arbitrary, conjectural and speculative, and are not based on all the evidence or upon a fair consideration of the evidence.

5. Because same are based on conjecture, surmise and improper inferences and on incompetent, irrelevant and immaterial evidence and upon findings of fact not supported by the evidence.

6. Because the findings of fact upon which same are based are not supported by the evidence; and because the findings of fact are insufficient in law and in fact to support or justify said conclusions, for all the reasons set forth in Point No. 15.

7. Because the evidence does not show that the petitioner has violated the provisions of the National Labor Relations Act therein referred to.

8. Because said conclusions and determinations deprive petitioner of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

9. Because said conclusions are based upon a hearing in which, and in the conduct of which, petitioner was denied a fair trial.

10. Petitioner assigns as error the said findings, statements and conclusions for all the reasons set forth in Point No. 15.

[fol. 58]

26.

The trial examiner erred in his findings, statements and conclusions contained in his Intermediate Report under the heading "Recommendations" (pp. 42-44) under subparagraphs 1 (a), (b), (c), (d) and (e), particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit: -

"Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Donnelly Garment Company (Kansas City, Missouri) and its officers, agents, successors and assigns, shall: -

"1. Cease and desist from: -

"(a) Dominating or interfering with the formation and administration of Donnelly Garment Workers Union or the formation or administration of any other labor organization of its employees, or from contributing support to the Donnelly Garment Workers Union or any other labor organization of its employees;

"(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement which may now be in force with the Donnelly Garment Workers Union and from giving effect to its check off agreement with the Donnelly Garment Workers Union;

"(c) Discouraging membership in International Ladies' Garment Workers' Union or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

"(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

"(e) In any other manner interfering with, restraining or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

[fol. 59] for each and all of the following reasons, to-wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the trial examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the trial examiner in

said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inference therefrom.

5. Because under the law and the evidence petitioner should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the trial examiner.

6. Because said recommendations or any order based upon same would deprive petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the trial examiner to consider and weigh all the evidence.

[fol. 60] 9. Because the evidence does not show that the petitioner has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, petitioner has been denied a fair trial.

12. Because said recommendations and each of same are based on incompetent, immaterial and irrelevant evidence.

13. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

14. Because said recommendations and each of same are not conducive to effectuate the purposes and provisions

of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. For all the reasons stated in the foregoing Point No. 15.

16. Because the evidence does not show that the respondent is doing or has done any of the acts or things set forth in said recommendations and for said reason petitioner cannot desist and cease from doing same, and said assumption by the trial examiner is erroneous and not supported by the evidence.

27.

The trial examiner erred in his findings, statements and conclusions contained in his Intermediate Report under the [fol. 61] heading "Recommendations" (pp. 42-44) under subparagraph 2, particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representatives;

"(b) Reimburse its former and present employees for all dues and assessments, if any, which it has deducted from their wages on behalf of the Donnelly Garment Workers Union;

"(c) Post immediately in conspicuous places on every floor throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), (d), and (e) hereof; (2) that it will take the affirmative action set forth in paragraph 2 (a) and (b).



hereof; and (3) that the respondent's employees are free to become or remain members of the International Ladies' Garment Workers' Union and that the respondent will not in any manner discriminate against any employee because of membership or activity in such organization.

"Notify the Executive Secretary of the Board in writing within ten (10) days of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

.....

"It is further recommended that unless on, or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Executive Secretary in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid."

.....

[fol. 62] for each and all of the following reasons, to-wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.
2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the trial examiner.
3. Because said recommendations are contrary to the evidence and to the law under the evidence.
4. Because said recommendations are based upon the findings of fact and conclusions of the trial examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.
5. Because under the law and the evidence petitioner should not be required or ordered to do any of the acts and things enumerated in said recommendations of the trial examiner.

6. Because said recommendations or any order based upon same would deprive petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligations of the trial examiner to consider and weigh all the evidence.

[fol. 63] 9. Because the evidence does not show that the petitioner has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon incompetent, irrelevant and immaterial evidence.

12. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

13. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, petitioner has been denied a fair trial.

14. Because said recommendations and each of same are not conducive to effectuating the purposes and provisions [of the purposes and provisions] of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. For all the reasons stated in the foregoing point No. 15.

By omitting certain sentences and paragraphs in the foregoing quotations from the Intermediate Report, peti-

tioner does not admit or intend to admit that the statements, findings or conclusions contained in said excepted sentences or paragraphs are true or are supported or justified by the evidence, or that any adverse inferences [fol. 64] or implications that may be drawn therefrom are supported or justified by the evidence. The trial examiner, in preparing the Intermediate Report, has so intermingled statements that are supported by the evidence with statements that are not supported by the evidence that it is impossible to separate the true from the false even in single sentences, and the findings and statements in the Intermediate Report often set forth clauses, sentences, or portions of the evidence which, standing alone, are strictly true, but do not fully or fairly state the whole evidence or the true purport thereof, and the inferences that might be drawn from the portions stated are not and would not be justified by the whole evidence if same had been fairly stated by the trial examiner. For these reasons, petitioner excepts to and assigns as error any and all inferences adverse to petitioner which are or may be drawn from such partial or unfair statements of the evidence.

## 29.

Petitioner assigns as error the Board's denial of petitioner's application (Board's Exhibit 1-EEEEEE) for a continuance of said further hearing and excepts to each and all the rulings and action of the Board contained and set forth in its order, Exhibit 1-GGGGGG, denying said continuance for and upon each and all the reasons and grounds set forth in said application for continuance; and for like reasons excepts to the action of the trial examiner in proceeding with said further hearing in denial of the application.

[fol. 65]

## 30.

Petitioner has been denied a fair trial and due process of law herein in this, to-wit: that petitioner in Part B of its Answer alleged, among other things, that during all the times mentioned in the Amended Complaint, the ILG-WU, Wave Tobin, manager of its Kansas City Joint Board, and others, had been and were engaged in an unlawful conspiracy to injure and destroy petitioner's business and to

force petitioner, in violation of the National Labor Relations Act, to compel its employees against their will to join the ILGWU, and that in furtherance of said conspiracy said ILGWU, its officers and agents, published false and libelous reports about petitioner and the working conditions in its plant and inaugurated and threatened secondary boycotts against petitioner's customers and threatened to cause gangs of lawless persons to assault petitioner's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets; assaulting them with knives, razor blades and other deadly weapons, which they perpetrated or caused to be perpetrated against employees of other garment manufacturers in Kansas City, Mo., St. Louis, Mo., Memphis, Tenn., and Dallas, Texas; that the ILGWU, on or about March 15, 1937 began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company and Gernes Garment Company, all of Kansas City, Mo., for the purpose of compelling those companies to force their employees to join the ILGWU; that at said time, the ILGWU did not represent a single employee of the Gernes Garment Company, and a very small minority in the other two of said companies; that agents of the ILGWU and [fol. 66] nounced that the acts of violence perpetrated against the employees of said companies would be perpetrated against the employees of petitioner's company and would be commenced against petitioner's employees after the above mentioned companies had been forced to capitulate and yield to the demands of the ILGWU for a closed shop, and thereby compel their employees to join the ILGWU; that petitioner further alleged in said Part B of its Answer herein that the Board filed the complaint herein and maintained this proceeding with knowledge of said unlawful conspiracy and activities of the ILGWU and assisted the ILGWU in said unlawful conspiracy, to force petitioner to compel its employees to join the ILGWU, in violation of the National Labor Relations Act.

That the trial examiner struck out erroneously Part B of Petitioner's Answer (R. 6100) and refused to permit

petitioner to adduce evidence in support thereof and rejected petitioner's offer of proof thereon; refused to permit petitioner to show, among other things, the ruthless, violent and unlawful methods used by the ILGWU in their various strikes at St. Louis, Mo., Memphis, Tenn., Dallas, Texas, and in the strike conducted by the ILGWU in Kansas City, Mo. against the Gernes, Gordon and Missouri Garment plants in March and April, 1937 (just prior to the organization of the DGWU), and the threats to use the same or worse tactics against the Donnelly employees, or to show the effect which said methods and threats of the ILGWU had upon the petitioner's employees with reference to the formation of the DGWU and their selection of bargaining representatives.

That said evidence was highly material and relevant upon the chief issue herein, as to whether petitioner coerced its employees into forming the DGWU or whether they [fol. 67] formed that union of their own free will and because they did not want to be represented by a union employing the unlawful tactics used by the ILGWU; that said evidence was material and relevant upon the credibility of the Board's witnesses who were affiliated with the ILGWU. That said evidence was material and relevant upon the question of whether the charges filed by the ILGWU herein were bona fide or an unlawful effort of the ILGWU to coerce petitioner to require its employees to join that union against their will and hence upon the question of whether the Board should institute or continue this proceeding for the purpose of benefiting the ILGWU and removing from its path the DGWU, its only competing union among the Donnelly employees, by ordering the disestablishment of the DGWU and specifically prohibiting petitioner from interfering with the organizational activities of the ILGWU (although accompanied by fraud and violence of the most despicable character), or whether the Board should dismiss the complaint herein. That said evidence was material and relevant upon the interpretation to be given by the Board not only of the acts and testimony of the Board's witnesses who were affiliated with the ILGWU, but also of the acts and testimony of petitioner's employees and their good faith in testifying to the reasons for preferring an association of their own



(the DGWU) instead of the ILGWU. That the refusal of the trial examiner and Board to receive and consider said evidence was also material and relevant upon the question of the finality to be given to the Board's findings of fact made in the absence of such evidence.

That by reason of the matters aforesaid and the refusal of the trial examiner and Board to receive such testimony, [fol. 68] the petitioner has been denied a fair trial herein and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 31.

The spirit and letter of the Order of this Court remanding the case to the Board for the purpose of taking further testimony held to be material, has been nullified by the trial examiner's and Board's continued refusal to regard as material the testimony of petitioner's employees as to how and why they came to form the DGWU, as exemplified in the Board's statement in its Decision and Order (p. 2) that:

"... We are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case."

That by reason of the fixed and unalterable view of the Trial Examiner and Board as to the immateriality of said evidence, it is apparent that they gave no real or genuine consideration to said evidence; because of which petitioner has been denied the benefit of said evidence and the Board's order should be set aside and for naught held.

## 32.

That the spirit and letter of this Court's order remanding the case to the Board for the taking of further testimony has also been nullified by the trial examiner's rulings (affirmed by the Board) erroneously interpreting the Court's remand and restricting the additional testimony to be taken to employee witnesses; and in restricting the testimony of such employee witnesses to the trial examiner's

[fol. 69] erroneous construction of the scope of evidence covered by petitioner's offers of proof which had been rejected at the previous hearing, and in refusing to permit petitioner to adduce testimony as to the activities and threats of the ILGWU and "other material evidence" bearing on the issues of whether petitioner dominated, coerced or interfered with its employees in their free choice of a labor union, by reason of which petitioner has been denied the benefit of the order of remand, and the Board's order should be set aside and for naught held.

33.

The Board erred by its Order dated June 10, 1943, denying petitioner's Motion for Correction of the Transcript.

[fol. 70]

34.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth on Page 228 of the transcript of the record that he was "not bound by the rules of evidence and why be bound by any technical proceedings of the Court", and to his comment on Page 229, to-wit, "We will proceed on the basis I have just explained". (R. I. 18.)

35.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling objection to testimony regarding the Donnelly Loyalty League and admitting testimony concerning same, which ruling and action is set forth in the following excerpt from the transcript of the record, Pages 272, 273: (R. I. 34.)

"Q. Are you still a member of the Loyalty League?

A: Yes, sir.

Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers' Union.

Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

36.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting in evidence Board's Exhibit 2 over the objection of petitioner and intervener, which rulings and action are set forth in the transcript of the record at pages 305, 306, (R. I. 42-43) as follows:

[fol. 71] "Mr. Leary: Board offers its Exhibit 2.

"Mr. Ingraham: I object for the reason that there has been no showing that the Donnelly Company Athletic Club — what is the name of this? The N. D. A. A. represents the company in any shape, way, shape or form, and nothing that it publishes in any way is binding upon the respondent. . . .

"Trial Examiner Batten: Well, you are offering it in its entirety?

"Mr. Leary: I am, Mr. Examiner; yes, sir.

"Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)"

37.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) set forth on Page 360 (R. I-58) of the transcript of the record as follows:

"Q. Your memory is a complete blank on this matter of a stenographer and how she was obtained and who she was and so forth?

"Mr. Tyler: Well, I object to that as repetition and argument with his witness. She said she doesn't remember. I object to that method of cross-examination and browbeating of this witness.

"Trial Examiner Batten: Now, Mr. Tyler, there is no browbeating or even indication of it thus far, not even a semblance of it thus far. I think Mr. Leary has been very gentlemanly, and that is what I expect all counsel to be in this hearing. Now, I am here for some purpose and if it got to the point in this hearing where anybody attempts to browbeat a witness, I will see that they are amply protected.

[fol. 72] "Mr. Tyler: I submit that repeating the question with emphasis after she once answered it amounts to improper cross-examination, and it is not proper at this time.

"Trial Examiner Batten: You may answer."

38.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking the answer of witness Rose Todd as set forth in the transcript of the record at Pages 428, 429, 430, (R. I-77-78) as follows:

"Q. Well, did you know on April 22d that Fern Sigler was in the union?

"A. Mr. Leary, I am not clear on the date of that.

"Q. Well, that would be the day before this meeting.

"A. In the evening; possibly that night.

"Q. April 22d?

"A. It was either the 22d or the 23d. I don't know which it was. Whatever date that you say will have to stand, because I couldn't remember the date. It was the first time that I knew anything about Sylvia Hull. I didn't know anything about Fern Sigler until this morning.

So, what,—in that conversation there, I don't think I am referring to Fern at the time. It was just a general discussion of different people, about their feeling toward people that belonged to the International Union. As you will remember, that feeling was created by the disturbance that was going on around town, and particularly up at 26th and Grand.

"Mr. Leary: I move, Mr. Examiner, that be stricken as not responsive.

"Mr. Leary: Let the whole answer be stricken.

"Trial Examiner Batten: The entire answer may be stricken, \* \* \*"

39.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling objection of petitioner and intervener to the cross-examination by Mr. Langsdale, attorney for the International Ladies' Garment Workers' Union, of witnesses in this proceeding, which objections and ruling are set forth at pages 514, 515 (R. I. 106), of the transcript of the record as follows:

[fol. 73] "Mr. Lane: Mr. Examiner, prior to Mr. Langsdale's cross-examination, I renew my objection as to his right to cross-examine this witness on the ground that he is taking the position adversary to that of the Board, which he, being counsel for the International Ladies' Garment Workers' Union, which is the claimant in this case:

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: The objections are overruled.

"Mr. Langsdale: Shall I proceed?

"Trial Examiner Batten: Yes, sir."

40.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) concerning the witness Rose Todd and her testimony appearing on Pages 557 to 559 of the transcript of the record for the reason that same show the bias and prej-



udice of the Trial Examiner against the petitioner, and show his failure and refusal to consider testimony favorable to petitioner and show that petitioner was denied a fair and impartial hearing herein by the trial examiner and for the reason that the trial examiner was thereby attempting to intimidate and confuse the witness and inject into the record a highly prejudicial conclusion and statement concerning the said witness for the purpose of misleading the Labor Board and any Court that might review the evidence, and for the reason that said bias and prejudice of the trial examiner were and are highly prejudicial to petitioner in that same were carried forward into, and permeate, the findings of fact, conclusions and recommendations of the trial examiner which comments and action of the trial examiner are set forth in the following excerpts from the record (pp. 557, 558, 559), (R. E. 124, 125, 126) to-wit:

[fol. 74] "Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

"Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

"Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?"

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

"Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized (crystalized) in written form, which is the summary of the witness' memory of what was done; that there is no provision or presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

[fol. 75] "Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervener excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham.

"Mr. Ingraham: I think it is incorrect.

"Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago."

41.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) appearing on Pages 640, 641 of the transcript of the record (R. I. 140), overruling petitioner's objections to the witness being permitted to interpret a written contract and permitting the witness to give her interpretation of said contract, which said objections and rulings are disclosed by the following excerpts from the record, to wit:

"Q. Let us take in this same person with the \$18 guarantee, who worked during certain weeks only 20 hours, but who during those 20 hours of work earned only \$9, or rather \$8.50, on a piecework basis. What would be the person's pay check for that week?

A. I am not very good at mathematics.

"Mr. Stottle: The respondent doesn't object to the witness telling what she can about that, but we do object to a witness trying to interpret a written contract, which is here in evidence, and \* \* \* allow those interpretations of a written contract to be deemed as binding on the respondent. We don't believe that is proper.

[fol. 76] "Trial Examiner Batten: Well, don't you think, Mr. Stottle, a person who is a party to the contract has a right to give their idea of how it should be interpreted; whether it is binding, I am not passing on that, but surely the person who signed it ought to be in a position to say what they think about it.

"Mr. Leary: I will withdraw the question, if Mr. Stottle will point that portion out in the contract to me.

"Mr. Stottle: I say, there is a written contract that provides, that all of that is provided about the guarantee.

"Mr. Leary: Will you point that particular part out to me now?

"Trial Examiner Batten: The witness may answer the question. I have said she is qualified as a party to this contract to give her idea of what it is."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) permitting the International Ladies' Garment Workers' Union to cross-examine the Board's witnesses and other witnesses over the objection of the petitioner and the intervener appearing on Page 650 through Page 654 of the transcript of the record (R. I. 141, 142), which objections and rulings are disclosed by the following excerpt from the transcript, to wit:

"Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies' Garment Workers' Union being permitted to interrogate this witness or to cross examine this witness, for the reason that counsel for that organization, the claimant in this case, having during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness; to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double [fol. 77] cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination at this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination, and—

"Trial Examiner Batten (interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

"Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervenor in this case of due process.

"Mr. Stottle: Respondent makes the same objection.

\*\*\*

"Trial Examiner Batten: I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

43.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting Mr. Langsdale, as counsel for the International Union, to read into the record and interrogate the witness concerning a purported affidavit of Mrs. Reed given in another proceeding, over the objection of the Intervener and the Petitioner as disclosed by the transcript of the record, pages 674 through 680 (R. I. 149, 150), and from the following excerpts therefrom, to wit:

"Q. Let me ask you if you have read or heard read the affidavit filed in that suit, signed by Neil Quinlan Reed, dated November 5, 1937, in which she stated, 'In the first place, a group of employees—

"Mr. Lane (interrupting): Just a moment. I am objecting, of course, to his reading the affidavit made in that trial as not being proper cross-examination of this witness and an improper way of trying to get that into this record:

"Q. (Mr. Langsdale) Have you heard this part of Mrs. Reed's affidavit read:—

[fol. 78] "Mr. Lane (interrupting): Just a minute. The witness' testimony, as I understand it, is she has not read or heard read any portion of that affidavit.

"Trial Examiner Batten: Mr. Lane, there is no objection to asking her if she has? You don't mean this has anything to do with the evidence, because an attorney



reads it in here? I suppose if you got up and read this whole case in here, line by line, then when you got through you asked the witness if she had ever heard it read before —It doesn't mean anything when the attorney reads it.

"Mr. Lane: I object to it.

"Trial Examiner Batten: You may proceed:

"Q. (Mr. Langsdale) Let me ask you if you heard read in that lawsuit this part of Mrs. Reed's affidavit: 'In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet and discuss ways and means to protect themselves against any assaults or acts of violence on the part of the International Ladies' Garment Workers' Union.'

"A. I did not know that.

"Mr. Ingraham: Well, if your Honor please, Mr. Langsdale asked this witness if she had read or heard read, rather, Mrs. Reed's affidavit, and then he proceeded to read from that affidavit, and he is still referring to some record and I think the inference is that he is still reading from an affidavit of Mrs. Reed, which would be confusing to the witness, when, in fact, he is not reading from Mrs. Reed's affidavit."

#### 44.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection on Page 696 (697) of the transcript of the record to the examination by Mr. Langsdale of the witness upon matters gone into in chief by the Board's counsel and as to why the witness said certain things in the Exhibit referred to in the objection and to the Examiner's permitting the International Union to proceed as a separate and independent party in this proceeding, which rulings and action appear in the following excerpts from the transcript of the record, Pages 696 (697), 698, 700, 703 (R. I. 154, 155):

[fol. 79] "Mr. Stottle: Mr. Examiner, respondent objects to this whole line of testimony on this exhibit for the reason that Mr. Leary went through the same exhibit and

asked the same questions, and it is repetition, for one thing; and, for another thing, the transcript speaks for itself. As to why she said a certain thing or didn't say it is immaterial to any issue in the case. I believe the examiner in his own statements made some such remark as that when this was gone into before.

"Trial Examiner Batten: I presume you are referring to this entire line of questioning, are you not?"

"Mr. Stottle: As to this exhibit, yes."

"Trial Examiner Batten: I am going to sustain the objection unless you take the position that you are an entirely independent and separate party to this action, Mr. Langsdale. If you are, then I will permit you to proceed as an entirely separate and independent party."

"Mr. Langsdale: I have taken that position, and I take it now."

"Mr. Stottle: Mr. Examiner, we object to his being accorded the right to take that position."

"Trial Examiner Batten: I am not according it. The rules so provide. The International Ladies' Garment Workers' Union is mentioned in this complaint. And if that is Mr. Langsdale's position, he may proceed as a separate and independent party and assume the responsibility for the conduct of his case independent of the Board's Attorneys."

"Mr. Ingraham: If the Examiner please, if Mr. Langsdale is representing a separate part he should also apprise all other parties of the position he takes, and all other parties should have pleadings setting forth his position."

"Trial Examiner Batten: I am not going to complicate this question I have raised by the matter of pleadings. I will permit you to raise it when I get my point settled."

"Mr. Lane: We do not agree with your Honor's position. Our position is, if the Examiner please, this witness is produced by the Board, and that the I. L. G. W. U., by rule 5, is made a party to the proceeding, the complaint being filed in the name of the Board, and that in attempting to cross-examine this witness Mr. Langsdale is in effect attempting to cross-examine his own witness."

"There is not anything in rule 25 which gives the Board or Mr. Langsdale the right to cross-examine his own witness."

[fol. 80]

45.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) in permitting counsel for the International Union to examine and cross-examine the witness, Rose Todd, concerning matters already gone into in chief by the Board's counsel which repetition and examination appears in the transcript beginning at Page 730 and extending through Page 742 (R.I. 155-160a), over the repeated objections of the petitioner and the intervener appearing on said pages.

46.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, Pages 743, 744 (R.I. 160a, 160b), to-wit:

"Q. Now, despite the fact that you said on the 23rd day of April that 'we're going to run an open shop', you presided at a meeting four days later where the Donnelly Garment Workers' Union was formed.

"Mr. Lane: Mr. Examiner, I object to that for the reason the question omits certain important additions made in the statement as shown by the transcript. The full statement attributed to Miss Todd being 'We're going to run an open shop as long as the majority feels that way. The majority is going to rule, as always'.

"Mr. Langsdale: Well, now I object to his incorporating anything in my question. I have a right to take such parts of the statement as I desire to examine her about and not use her self-serving —

"Trial Examiner Batten (interrupting): Read the question, please.

"(Whereupon, the question was read by the reporter).

"Trial Examiner Batten: You may answer."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objection of petitioner to the question as set [fol. 81] forth in the following excerpt from the transcript of the record, Page 750, to-wit:

"Q. If you should have some person who had had years of experience in negotiating contracts with garment companies similar to yours who should go to work for the Donnelly Garment Company and you should want them to represent you, even though they had only been there a week —

"Mr. Stottle (interrupting): Respondent objects to the questions as being wholly argumentative and speculative as to what might happen in the future and what might happen.

"Trial Examiner Batten: If you will permit him to finish the question, Mr. Stottle.

"Mr. Stottle: I did wait a while.

"Q. (By Mr. Langsdale) — would you think you should be limited in your right to employ that person or anyone else to represent you?

"Mr. Stottle: Now, Mr. Examiner, we renew the objection.

"Trial Examiner Batten: You may answer."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the International Union to examine the witness concerning her interpretation of a written contract over the objection of the petitioner and the intervener and requiring the witness to testify to said matters, as shown by excerpts from the transcript of the record, Pages 754, 759, 760, 761, 762-(R.I. 160f, 160g, 160h).

"Mr. Stottle: Mr. Examiner, the contract speaks for itself, whatever it may say, and we object to asking the witness to interpret something that is perfectly plain in

whatever it says. If it wasn't plain I don't believe this witness would have the right to interpret a written contract.

.....

"Q. (By Mr. Langsdale) Miss Todd, paragraph 11 of the working agreement entered into on May 27, 1937, is as follows:

"The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time on the affairs of the union and to continue her employment with the company at the proportionate rate of pay hitherto received by the company in the time thereafter given to the company."

"Will you tell me why you as a member of this contracting committee submitted to paragraph 11, placing a limitation [fol. 82] upon the activities of the representatives of that union as paragraph 11 does limit them?"

"Trial Examiner Batten: You mean as it does or if it does?"

"Mr. Langsdale: As it does."

"Mr. Patten: Mr. Examiner, intervener objects to the question, adopting for that purpose the objection heretofore made by Mr. Stottle, and sustained, and the objection made by Mr. Lane; and further —

.....

"Mr. Patten: \*\*\* We further object because the question assumes, as other questions have assumed, that this committee submitted to it. There is no evidence whatever that they submitted to anything. For that reason we ask that the question be excluded."

"Trial Examiner Batten: Objection sustained."

"Mr. Langsdale: The union makes an offer to prove that this witness, if permitted to answer the question, would testify she intentionally desired to limit the activities of the representatives of the union for the purpose of crippling that representation and, in addition to that, the



further motive was developed by propaganda indulged in by the management of this company against union representation and the necessity therefor.

.....

"Trial Examiner Batten: Of course, if this witness will answer as you have just said, I will permit you to ask the question, because you have said if she is permitted to testify she would testify in a certain way. On the basis of that you certainly can proceed.

"Mr. Patten: If the Examiner please, I suggest that Mr. Langsdale agree to be bound by the witness' answer. Otherwise his offer is improper.

.....

"Q. (By Mr. Langsdale) Now, then, will you say why you did submit to the limitation of paragraph 11 upon the activities of the representatives of the Donnelly Garment Workers' Union?

.....

"A. There are no limitations on the committee of the Donnelly Garment Workers' Union.

They all take an active interest. They all have time at noon or after work, the same as I have, and you will find continuously through these minutes where they have done a lot of work and taken an active interest in it. I couldn't dominate those people if I wanted to.

"Mr. Langsdale: I move that the answer be stricken out as not responsive.

The question was, why did she submit to paragraph 11, [fol. 83] which puts a limitation upon the activities of the members?

"Mr. Stottle: Mr. Examiner, respondent objects in that the offer of proof is not being made, and asks that it be stricken.

"Trial Examiner Batten: It may stand."

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same)

in overruling petitioner's objection and permitting the witness Rose Todd to testify to her interpretation of written by-laws and contract as disclosed by the following excerpts from the transcript of the record, Pages 774, 775 (R.I. 164, 165), to-wit:

"Q. But under your by-laws, in your contract, [on] one can continue to work for the Donnelly Garment Company who joins the International Ladies' Garment Workers' Union; is that correct?

"Mr. Stottle: Just a moment. Mr. Examiner, we object to this question for the reason, as we have several times, this just involves an interpretation of the by-laws and contract. If this witness gave an answer, your Honor wouldn't feel bound by it, if you thought the contract meant something else, and what is the materiality of having her answer something that wouldn't bind you and bind Mr. Langsdale and not bind the respondent. It possibly might be binding on the intervener, I don't know that it would be, within a written contract made by the intervener.

"Mr. Langsdale: The question is provoked by the long answer of this witness that anyone could join an organization anyone wanted to with the Donnelly Garment Company, and of course, this is very plainly written that cannot be done.

"Trial Examiner Batten: I think it isn't so much a question of interpretation of the contract. It is a question of this witness on the basis of her volunteering a statement that anybody can join anything they please.

"Q. (By Trial Examiner Batten): Now, the question, Miss Todd, is this, or at least, my question: How can a person join any union they please under the restrictions in these contracts?"

[fol. 84]

50.

Petitioner assigns as error the rulings and action of the trial examiner (and the Beard's action in affirming same) as disclosed by the following excerpts from the transcript of the record, pages 784, 785, 786, 787 (R.I. 167, 168, 169), to-wit:

"Q. But who passed upon who belonged to that classification, group 1 operators, performing their work efficiently?

"A. Who passed on this, at this time?

"Q. Yes, under this contract.

"Mr. Stottle: If the Examiner please, respondent objects to the question as to who passed upon it. There is nothing to indicate the question has ever arisen as to whether the operator was efficient or otherwise.

"Trial Examiner Batten: Of course Miss Todd is reading this. Apparently someone has to pass on it if the question arises. I think the witness should testify who. The statement is there, as Mr. Lingsdale has read it — I haven't read it.

It seems to me that this witness should state that. That apparently is the [sume] and substance of the paragraph.

"Mr. Stottle: How could the witness state who passed on something if it never has been passed upon?

"Q. (By Trial Examiner Batten) Miss Todd, in those classifications, where it states 'who efficiently performs . . . .', who would determine that efficient performance?

"Mr. Stottle: Mr. Examiner, I think we should make our objection to your own question, also —

"Trial Examiner Batten (interrupting): You are perfectly free to.

"Mr. Stottle: — for the reason that you are asking the witness to interpret a provision of the contract which does not say who is to, and you are asking her to say who is to do something that is not provided for.

"Trial Examiner Batten: That is why I cannot possibly determine it myself by reading the contract, it does not say who it is.

"Mr. Stottle: There are lots of things that contract has not mentioned; that is one of them. If it isn't stated in the contract it is not a part of the contract.

"Trial Examiner Batten: As far as the Examiner is concerned I would like to know what this witness, who was

a party to the contract, representing this organization, says as to who performs efficiently.

[fol. 85] "Q. (By Trial Examiner Batten) Who determines that?

"Trial Examiner Batten: Your objection is overruled. I didn't say so, but by the following question I asked I supposed it was understood.

"Mr. Stottle: Mr. Examiner, may respondent have a continuing objection to this kind of questioning as asks for an interpretation of provisions of the contract?

"Trial Examiner Batten: I prefer that you not have it, because I don't know that I am going to make the same ruling on all of the questions that may be asked. I would prefer that you make your objections, Mr. Stottle, as the questions are asked; that is, on this matter."

51.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence subject to further identification of ILGWU Exhibit 2 over the objection of the petitioner, as disclosed by the excerpts from the transcript of the record, pages 821, 822 (R. I. 181, 182), to-wit:

"Mr. Stottle: Mr. Examiner, respondent objects to the introduction of this exhibit at this time because there hasn't been any identification that would show that it has any materiality on the case.

"Mr. Langsdale: Well, now, there are two objections in one. You object to it once because it isn't identified and another because it isn't material.

"Mr. Stottle: Yes. I am making both of them, neither identified properly or material if it were identified properly.

"Mr. Langsdale: Well, I think it has been sufficiently identified and certainly it is material.

"Trial Examiner Batten: Well, I don't see; I will receive it subject to further identification. I don't think

this witness' statement, Mr. Langsdale, is sufficient to receive it without qualification. \*\*\*\*\*

"I said I would receive it subject to further identification."

52.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding competent and material evidence, offered by petitioner through the witness Rose Todd concerning the threats of the International Ladies' Garment Workers' [fol. 86] Union against the Petitioner's employees, and the violence of the strikes and other activities of the I. L. G. W. U. at other garment factories for the purpose of showing the effect of said activities upon the petitioner's employees as being a motivating cause for the formation of the Donnelly Garment Workers' Union, and as disproving the allegations in the amended complaint that petitioner dominated said Donnelly Garment Workers' Union or caused its formation.

"In connection with the foregoing exception, petitioner also assigns as error the rulings and action of the Trial Examiner in the following excerpts from the transcript of the record, Page 839 (R. I. 190), to-wit:

"Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

"A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

"Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

"Trial Examiner Batten: We are not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.



"I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

53.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the petitioner to show the provisions contained in working agreements between the International Union and other garment manufacturing companies in Kansas City, Missouri, as tending to show the bona fides of the negotiations between petitioner and intervener as to the bargaining contracts between petitioner and intervener, and as tending to refute testimony offered by the Board [fol. 87] and the International Union that said contracts between petitioner and intervener were not bona fide and did not show genuine bargaining.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner as shown by the following excerpts from the transcript of the record, pages 857, 858, 862, 864, 865, 866 (R. I. 201-206 incl.), to-wit:

"Q. (By Mr. Stottle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts—\*\*\*\* in this city with the International Ladies' Garment Workers' Union?"

"Mr. Leary: Let the record show my objection, Mr. Examiner.

"Trial Examiner Batten: What is your objection?"

"Mr. Leary: On the ground it is incompetent, irrelevant and immaterial.

"Mr. Langsdale: The union wants to further object upon the ground it is immaterial and doesn't bear upon any of the issues before the Examiner unless we want to go into all of those contracts and show where they started from, how they built them up, and even go into some of them as early as 1933 to show that they were then getting \$3 and \$4 a week, and the union came along and built them up to their present contract. That hasn't any bearing upon whether or not this is a company dominated union or any of the charges in the complaint.

"Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the county. It is competent for that purpose.

\*\*\*\*\*

"The point has been raised that Miss Todd and other members of the committee didn't really negotiate.

"Here is a company that has been paying good wages, here is a company that treats its employees fairly, here is a company that does not try to beat down the wages. These employees come in and say they want to bargain collectively and want to enter into a written contract.

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees have better wages than are contained in any of these other contracts, I think that is very conclusive evidence that this union is properly representing the employees.

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[fol. 88] "Mr. Ingraham: I certainly think, Your Honor, that since Mr. Langsdale has gone into the question of the negotiations, and he said, 'Now, do you think this was good for your people? Do you think that provision was good for the members of your union?' I think in view of that examination of this witness we are certainly entitled to show just what contract was obtained, and of course it will show that the company gave up a great deal. The company signed a contract—

"Trial Examiner Batten (interrupting): Mr. Ingraham, you may go ahead on the basis you are now taking just as fully as you desire. In fact, I want you to show the

negotiations, the bargaining, and the process that was gone through in arriving at it. You may go into that as fully as you care to, but I am not going to go into this matter from the standpoint of comparison with other companies here or any other place.

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof: I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the motion of the Board's attorney and striking answers of the witness Rose Todd as shown by the following excerpt from the transcript of the record, pages 872, 873 (R. I. 208-209), to-wit:

[fol. 89] "Q. Miss Todd, it is alleged in the complaint that the company caused a violent demonstration against Fern Sigler and others as a means of causing the employees either to join the Donnelly Garment Workers' Union or to refrain from joining the International Union. I hand you here a paper which is marked Respondent's Exhibit No. 1, and will ask you if that is one of the notices in the newspapers that you have referred to that caused the incident at the plant that you testified about?

(Thereupon, the newspaper clipping above referred to was marked 'Respondent's Exhibit No. 1' for identification.)

"Mr. Langsdale: I object to that as an improper question. She is merely handed the document and asked to identify it, and he tacks onto that question, 'Was it something that caused the incident about Fern Sigler at the plant'.

"Q. (By Trial Examiner Batten) Have you seen that before, or read it?

"A. Yes.

"Q. At the time it was in the paper, is that it?

"A. Yes, sir. That is very definitely what caused that disturbance that morning.

"Mr. Leary: What was that?

"The Witness: That article in the paper, Sylvia saying she was going to represent the employees—

"Mr. Leary: I move that the witness' statement be stricken out. I asked the reporter what the witness' answer was.

(Thereupon the last answer was read by the reporter)

"Mr. Leary: I move that it be stricken as not responsive.

"The Witness: [Wy], yes, it is, Mr. Leary, isn't it?

"Mr. Leary: I said I move that the last statement of the witness be stricken as not responsive.

"Trial Examiner Batten: It will be stricken."

And in refusing to admit petitioner's Exhibit No. 1 for the purpose of showing that the matters recited in said exhibit were the cause of the alleged demonstration against Fern Sigler on April 23, 1937 which ruling and action appear on Pages 873 through 878 of the transcript of the record.

55.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Rose Todd to answer the following question appearing on Page 874 of the transcript of the record (R. I. 210), to-wit:

[fol. 90] "Q. And is that, the printing of that article in the paper and the seeing of it by the employees, is that what caused the demonstration against Fern Sigler on the morning of April 23d?"

and in refusing to permit the witness Rose Todd to testify that the matters in the paper referred to in said question, to wit, petitioner's Exhibit No. 1, was the cause of the demonstration against Fern Sigler on April 23, 1937.

56.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) sustaining the objection of the International Ladies' Garment Workers' Union to a portion of the answer of the witness Rose Todd set forth on Page 887 of the transcript of the record, as shown by the following excerpts from the transcript of the record, Pages 886, 887, 888 (R. I. 212, 213), to wit:

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?"

"A. Yes we felt like that is a good contract. We have certain things that we had to give—



"Mr. Langsdale (interrupting); I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection."

57.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) excluding evidence of the witness Rose Todd concerning violence and activities at other garment plants in Kansas City, which rulings are set forth in the following excerpts from the transcript of the record, Pages 908, 909 (R. I. 219, 220), to wit:

[fol. 91]. "Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gernes plant?

"Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testi-

mony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

58.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding similar evidence which rulings and action are set forth in the transcript of the record at Pages 910, 911, 913 (R. I. 220, 221, 222), to wit:

"Q. Did you see any of the banners or signs the pickets carried? A. Yes, Sir.

"Q. Do you remember what they said on them?

"Trial Examiner Batten: Just a moment, Mr. Tyler, I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of these matters.

[fol. 92]: "Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

"Trial Examiner Batten: I would suggest you embody that all in an offer of proof.

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit

they have a right to give<sup>9</sup> their reasons for preferring their own union.

& Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

"Mr. Stottle: Mr. Examiner, you have stated every party has an exception without asking for it?

"Trial Examiner Batten: That is right.

"Mr. Stottle: In order that it might be clear, would the respondent be granted an exception to a question asked by the intervenor when it is overruled?

"Trial Examiner Batten: All parties receive exceptions to all adverse rulings.

"Mr. Stottle: You might not deem it adverse to us.

"Trial Examiner Batten: I am not going to pass on that. If the parties deem it adverse you may have the exception. In other words, I do not intend to go through the record and determine whether it is adverse to certain parties or not.

"Mr. Stottle: I am not objecting to the intervenor—I asked if I would have an exception to the Examiner's ruling, even though the ruling was made to a question asked by the Intervener.

"Trial Examiner Batten: I would say yes.

"Mr. Langsdale: Even if he does not make an objection?

"Trial Examiner Batten: Yes, if it is adverse."

59.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to receive evidence concerning the violence and activities of the International Union at other garment factories in Kansas City and the effect thereof upon the em-[fol. 93] ployees of petitioner and in refusing to accept the offer of proof made thereon by the intervenor at Pages 913, 914, 916 of the transcript of the record (R. I. 223, 224), as follows, to wit:

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees of the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

60.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing on Pages 956, 957 of the transcript of the record (R. I. 238g, 238h), with reference to the minutes of the Donnelly Garment Workers' Union because such comments show the bias and prejudice of the Trial Examiner and his intention to disregard the minutes as evidence in this proceeding, in so far as same are favorable to petitioner.

61.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking the answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 966, 967 (R. I: 238i, 238j), as follows, to wit:

"Q. (By Trial Examiner Batten): Now, what was the situation before the contract?

"A. The situation before had been that the employer had the right to increase or reduce his working force, but [fol. 94] this contract gives the union also the right to

interfere if he feels so—if we feel that someone is being allowed to go unnecessarily.

“Q. You mean because of the union activity?”

“A. Well, no, not necessarily that. We certainly would do that if they were being let go because of union activity, but if they were being let go and we felt it was not right, the union still has the right to go to the employer and see if these people couldn't be retained.

“Mr. Langsdale: Now, I object to that answer and ask that it be stricken out as an explanation for paragraph 14, because there isn't anything in paragraph 14 upon which to base that statement or conclusion, not anything. That says, 'The employer shall have the right to discharge.'

“Trial Examiner Batten: I was just getting ready to ask another question or two, but in view of your motion I will have it stricken. I was going into that some more. You may proceed.”

62.

Petitioner assigns as error the rulings and action of the trial examiner and his comments (and the Board's action in affirming same) upon the testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record at Page 970 (R. I. 238k), to wit:

“\* \* \* \* \*. This Group 1 operators gives these operators a much higher guarantee than they had ever been guaranteed before. [Forth] per cent of them receiving—

“Mr. Langsdale (interrupting): Now, I object to that answer as a conclusion upon the part of the witness. The evidence ought to be as to what the increase [it].

“Mr. Tyler: I think it is desirable that she should give the figures as she knows them, but I think that if she can say as a fact that the figures are higher, she is entitled to state that, even if she can't give the figures.

“Trial Examiner Batten: I don't think it means a thing in the way she answered, much higher. If she doesn't know, let's get somebody here that does. I mean, there is no use trying to have a witness answer questions that they can't answer. Now, surely there is somebody in the organization or with the respondent who could very definitely state, Mr. Tyler.”



[Vol. 95]

63.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) excluding and refusing to hear or consider evidence comparing the wages and other working conditions provided for in the contract between the petitioner and Donnelly Garment Workers' Union in comparison with like wages and conditions existing under contracts between the International Ladies' Garment Workers' Union and other garment manufacturing companies in and about Kansas City, Missouri.

In connection with the foregoing exception, petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at Pages 981, 982, 983 (R. I. 238r, 239), to-wit:

"Q. Miss Todd, did you hear the testimony of Velma Dowdy in the injunction suit tried before Judge Miller?

A. Yes, sir.

Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year— . . . the figures she testified she paid to the International Ladies' Garment Workers' Union as a member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

"Now, don't answer yet.

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

Trial Examiner Batten: I now rule it is absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' Union and the Donnelly Garment

Workers' Union. The International Ladies' Garment Workers' Union is not on trial here, neither is the Donnelly Garment Workers' Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

[fol. 96]

64.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) refusing to hear or consider evidence concerning the application of the Donnelly Garment Workers' Union that the Labor Board hold an election by petitioner's employees as to the bargaining agency or union which they desired to represent them.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record at Pages 1000, 1001 (R. I. 242, 243), to-wit:

"Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees? A. Yes, sir.

"Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

"Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. . . .

"Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

"Mr. Tyler: Then, I wish to make an offer of proof.

"Trial Examiner Batten: You may make an offer of proof.

"Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions

with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was, devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney [fol. 97] to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller."

65.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking portion of the answer of the witness Rose Todd as set forth in the following excerpts from the transcript of the record at page 1018 (R. I. 248), to-wit:

"Q. Have any requests been made by the union from the company for permission to use those bulletin boards?

"A. No, sir. Anybody uses them, and we have just used them.

"Mr. Leary: I move to strike all except the first two words of her answer as not responsive.

"Trial Examiner Batten: It may be stricken."

66.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) upon testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 1018, 1019, (R. I. 248a), to-wit:

"Q. (By Mr. Tyler): Now, at the time you received what I believe you have testified to as the only raise you have had from the company, is it or is it not a fact that a

large number of employees received raises at the same time? A. It is a fact.

"Mr. Langsdale: I object to this constant leading of this witness, his own witness, his own client, and I suggest that the payroll is the best evidence of that. How does this woman know what was on everybody's envelope or everybody's check?

"Q. (By Mr. Tyler) She has not testified to everybody's envelope or everybody's check.

"Trial Examiner Batten: Mr. Langsdale, I think your objection goes to the weight that may be given this testimony. If that remains as it now stands, without any cooperation, or anything of the kind, certainly the Examiner nor the Board could give a great deal of weight to it."

[fol. 98]

67.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking a portion of the answer of the witness Rose Todd as set forth in the following excerpt from the transcript of the record, Page 1037, to-wit:

"Q. Had you prior to March 18, 1937, ever been required to show an identification card in order to gain admittance to the plant?

A. No sir, I don't recall any need for one before that.

"Mr. Langsdale: I ask that the latter part of the answer be stricken out as not responsive, and voluntary.

"Trial Examiner Batten: It may be stricken."

68.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence and exhibits concerning the Nelly Don Country Club, which testimony and exhibits are set forth and referred to on Pages 1158 to 1167 of the transcript of the record (R. I. 289, 290, 291), for the reason that same are wholly immaterial to any of the issues herein.

In connection with the foregoing assignment, petitioner also assigns as error the rulings, action and comments of

the trial examiner (and the Board's action in affirming same) in admitting the testimony and refusing to sustain petitioner's and intervenor's objections, as set forth in the following excerpts from the transcript of the record at Pages 1158, 1159, 1160, 1161, 1163, to-wit:

"Q. Is there another association, I mean different from any of those that have up to now been mentioned, to which you pay \$2 a year dues?

"Mr. Stottle: Mr. Examiner, respondent objects to getting into still additional organizations, if there are any. Certainly the respondent has a right to provide a country club for its employees if they want to, and let them pay so much a month. There is no showing that it is done for the Donnelly Garment Workers' Union.

[fol. 99] "Trial Examiner Batten: I don't suppose there is any argument that the respondent could furnish the employees a country club for nothing if they wanted to.

"Mr. Stottle: And of course it would not be material to these issues.

"Trial Examiner Batten: I can't determine whether it is material or not until I find out about this matter of these rentals Mr. Langsdale is inquiring about.

"Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter)

"A. I haven't mentioned all of the ones there are.

"Q. (By Mr. Langsdale) To whom do you pay this \$2 a year?

"A. I think that card says 'Nelly Don Country Club'.

"Q. I hand you this card which has been marked International Ladies' Garment Workers' Union's Exhibit No. 3 and ask you to state what it is—not what is on it, but what it is.

"A. It is a membership card of the club out there.

(Thereupon the card above referred to was marked 'International Ladies' Garment Workers' Union's Exhibit No. 3).

"Mr. Langsdale: I offer Exhibit No. 3.



"Mr. Stottle: Respondent objects on the ground that it is wholly immaterial to any of the issues in this case.

"Trial Examiner Batten: Thus far I don't see that it has any bearing.

"Mr. Langsdale: I want to ask some questions about it.

"Trial Examiner Batten: You may proceed.

"Mr. Lane: Intervener objects to International's Exhibit No. 3 for the reason that it is not material—it is not within any of the pleadings in this case, and for the reason that it opens up ramifications that are wholly outside of any proper inquiry in this investigation.

"Trial Examiner Batten: You may proceed until I can determine. And if when he completes this matter, Mr. Lane, if it is not connected up with the issues in any way you may make a motion to have it stricken and it will be stricken.

"Q. Well, has the membership, the club membership, anything to do with whether or not members of the Loyalty League have the privilege of going to the club house to a Loyalty League party?

"Mr. Stottle: Respondent objects to that as being speculative as to whether there was a Loyalty League party or what Loyalty League party, wholly immaterial or any issues. It has been testified heretofore that the employees of the Donnelly Garment Company, a great many of them, belong to the Loyalty League, that a great many of them belong to the Donnelly Garment Workers' Union, that a great many of them belong to this club business, a great many of them belong to the Athletic Association. [fol. 100] If anything is done down there that involves employees, there is bound to be certain overlapping."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the International Union to prove his offer of proof by the witness Rose Todd and in doing so to ask the questions to which the Examiner had sug-

tained objections, and in failing and refusing to strike said offer of proof when it appeared that the International Union was unable to prove such offer by the witness, as appears from the transcript of the record, Pages 1189 to 1193.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) referred to in the foregoing assignment as same further appear in the following excerpts from the transcript of the record, Pages 1189, 1192, 1193 (R.I. 292b), to-wit:

"Mr. Langsdale: All right, I offer to prove that, and also offer to prove that she examined all of this data during working hours, and that sometimes it amounted to 1,300 different employees or thereabouts, and that it took, many, many hours of the company's time to make the examination. That is the offer of proof I make.

"Trial Examiner Batten: Well, I will permit you to prove that by this witness.

"Mr. Stottle: Mr. Examiner, the respondent, if Mr. Langsdale is finished with that offer of proof, moves that the latter part be stricken from the record as not made in good faith, because he hasn't asked the witness to go ahead and state that she spent hundreds of hours, or whatever this offer of proof was, on this matter.

"Mr. Langsdale: Well, I —

"Mr. Stottle (interrupting): It was just — it is not fair to have it appear in the record that he made an offer of proof by this witness —

"Trial Examiner Batten: Well, Mr. Stottle, I think — I think that Mr. Langsdale's offer of proof, and the questioning of the witness subsequent thereto speaks for itself."

[fol. 101]

70.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection and receiving evidence

as shown by the following excerpts from the transcript of the record, pages 1196, 1197 (R.I. 292c, 292d), to-wit:

"Q. I note that in January, 1938, Fred Brown got another raise, from \$97 to \$108.54 every two weeks. Do you know whether or not that is a fact?

"A. No, Mr. Langsdale, I don't.

"Mr. Stottle: Mr. Examiner, respondent objects to this evidence as being immaterial, what different employees, of which there are 1,200 or 1,300 down there—what raises in pay they received. The answers have all been in the negative and there is probably no evidence on it as yet, but it seems to me it is immaterial.

"Trial Examiner Batten. Mr. Stottle, in the first place, I don't suppose she knows about these matters. And, in the second place, I cannot tell now whether it is material or whether it isn't. If Mr. Langsdale has the records and that is what they show —

"Mr. Langsdale (interrupting): We will bring them in, but I think I have a right to inquire whether or not the president of the union knew about these matters.

"Trial Examiner Batten: I am not telling you to discontinue.

71.

"Petitioner assigns as error to the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on Page 1199 of the transcript of the record, to-wit:

"Q. Do you know whether or not Mr. McConaughy's change from the mechanical department to the bookkeeping department was because he was a member of your board of chairmen?

"Mr. Lane: I object to that as calling for a conclusion of the witness.

"Trial Examiner Batten: Well, I presume the president of the organization, Mr. Lane, ought to know or not know. As far as she knows, she may state whether that was the reason."

[fol. 102]

72.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Rose Todd to testify to her interpretation of the written contract between petitioner and the Donnelly Garment Workers' Union over the objection of the petitioner, which objection and the ruling of the Examiner thereon is set forth in the following excerpts from the transcript of the record, Pages 1203, 1204, to-wit:

"Q. Now, are those percentages invariable? Are they fixed or do they vary?

"Mr. Stottle: Mr. Examiner, I make the objection that the written contract provides concerning that, and it is binding, and that this is asking the witness to interpret the contract.

"Trial Examiner Batten (interrupting): Well, if it is applied to this question, I have no objection. I would overrule the objection."

73.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike answer of the witness May Fike, which answer, motion and ruling are set forth in the following excerpts from the transcript of the record, Pages 1256, 1257, to-wit:

"Q. Who would tell you to lay off when your vacation was coming?

"A. Well, I don't remember how we knew our vacation was coming. I suppose our instructor would tell us when it came time for our vacation or when our vacation time was up.

"Mr. Ingraham: I move that the answer be stricken. She 'supposes' that that was done.

"Trial Examiner Batten: I will permit it to stand. I have permitted a lot of others to stand that were apparently supposing or thinking. It may stand for whatever value it has."

[fol. 103]

74.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence over the objection of the petitioner and intervenor Board's Exhibit No. 14, purporting to be the pledge signed for the Loyalty League which objection and the rulings of the trial examiner thereon appear in the following excerpts from the transcript of the record, Pages 1267, 1268 (R.I. 304a), to-wit:

"Mr. Lane: I object to exhibit No. 14 for the reason that it has not been properly identified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

"Trial Examiner Batten: It will be received.

"Mr. Ingraham: Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case."

"Trial Examiner Batten: It is received."

75.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of the petitioner to testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Page 1269 (R.I. 305), to-wit:

"Q. Do you know whether or not she said anything at the time?

"A. She said we should sign and pass that to the next girl, if I remember right.

"Mr. Ingraham: Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

"Trial Examiner Batten: Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.



"Mr. Stottle: We further object because it is not identified as to what instructor said that.

"Trial Examiner Batten: She may proceed."

• [fol. 104]

76.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the objections of petitioner and intervenor and receiving testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1269, 1270, 1271 (R.I. 305, 306, 307).

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing to sustain the objections to the testimony above referred to and the continuing objection of the petitioner and intervenor to said line of testimony, and further excepts to the action of the trial examiner (and the Board's action in affirming same) in permitting said witness to [continue] to testify to said matters.

77.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, pages 1288, 1289 (R.I. 311, 312), to-wit:

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

"A. There is never no papers come into that section that she don't know about it before the girls get them, and —

"Mr. Lane: I move to strike the answer as not responsive.

"Trial Examiner Batten: Let her finish.

• "Mr. Lane: I thought she had finished.

"Trial Examiner Batten: She was saying something else there.

"Q. (By Trial Examiner Batten): What were you saying?

"A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

"Q. (By Mr. Leary): Can she see —

"Mr Lane. (Interrupting): Just a moment. If the witness has now finished her answer, I move that it be stricken [fol. 105] for the reason that it is not responsive.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: Respondent makes the same objection because

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: I object to it further for the reason that it calls for a conclusion on the part of the witness.

"Trial Examiner Batten: Objection overruled."

# 78.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's and intervenor's motions to strike testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1292, 1293 (R.I. 314, 315), to-wit:

"Q. What, if anything, did Fern Sigler say to you about the union button?

"Mr. Ingraham: I object to that as hearsay.

"Trial Examiner Batten: You may answer.

"A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

"She said, well, she was going to wear it anyway. And I said, 'Well, I will lose mine too'. And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

"She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23rd.

"Mr. Ingraham: I move that the answer be stricken out — I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self-serving.

"Mr. Lane: Intervener makes the same objection and the same motion to strike.

"Trial Examiner Batten: Objection overruled— \*\*\*\*\* and the motion to strike is denied."

[fol. 106]

79.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting the evidence of the witness May Fike and refusing to strike same upon motions of petitioner and intervener concerning remarks alleged to have been made by a group of employees to Fern Sigler on April 23, 1937, for the reason that the witness was unable to state who made the alleged remarks, which objections, motions and rulings appear on Pages 1296, 1297, 1298, 1299, of the transcript of the record (R. I. 316, 317).

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the Trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record, Pages 1305, 1306, 1307 (R. I. 320, 321), to wit:

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

"A. Well, of course, they were all hollering. I couldn't describe now which ones did say which.

"Trial Examiner Batten: That is all.

"Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

"Trial Examiner Batten: The motion is denied.

"Mr. Ingraham: Respondent makes the same motion.

"Trial Examiner Batten: The motion is denied.

"Q. Have you told the examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

"A. They told her she couldn't belong to the International Union and work in their shop.

"Mr. Lane: Intervener makes the same objection that has been heretofore made.

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: In order not to burden the record, may I have a continuing objection?

"Trial Examiner Batten: You mean as to this incident of April 23?

"Mr. Lane: Yes, sir.

[fol. 107] "Mr. Ingraham: Respondent moves to strike the answer out for the reason that it calls for hearsay testimony; and for the further reason that anything the employees said is not binding on the respondent.

"Trial Examiner Batten: Motion denied.

"Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

"Trial Examiner Batten: Yes, to this incident."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, Page 1309 (R. I. 322), to wit: "

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

"A. No, sir, they didn't.

"Mr. Lane: I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

"Trial Examiner Batten: It may stand as it is."

## 81.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record, Pages 1310, 1311, 1312 (R. I. 323, 324), to wit:

"Q. Did you hear any threats made to Fern Sigler?"

"A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

"Mr. Ingraham: I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

[fol. 108] "Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

\* \* \*

"Trial Examiner Batten: The third objection, Mr. Ingraham, is overruled."

## 82.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to strike the answer of the witness May Fike and denying the motion of petitioner therefor as set forth in the following excerpts from the transcript of the record, Pages 1312, 1313 (R. I. 324), to wit:

"Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?"

"A. Well, Ethel Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who



said 'throw her out the window'. I think that was Mary Sprofera, but I am not sure about it.

"Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

"Trial Examiner Batten: Motion denied."

## 83.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness May Fike to testify to the conversations and incident relating to Fern Sigler on April 23, 1937 and in overruling petitioner's and intervenor's various objections thereto, including the continuing objections to said testimony, some of which objections and rulings appear on pages 1319, 1320 of the transcript of the record (R. I. 326, 327), as follows, to wit:

"Mr. Ingraham (interrupting): Now, just a minute. Your Honor, is my objection standing that it is hearsay and not binding?

"Trial Examiner Batten: Well, I understood both Mr. Lane and Mr. Ingraham had a continuing objection to the incident of April 23, 1937.

"Mr. Ingraham: That is all—this, yes.

[fol. 109] "Trial Examiner Batten: I mean, concerning all of this incident.

"Mr. Shepard: If your Honor please, I object to all of this as being absolutely irrelevant and immaterial, doesn't tend to prove anything in the case as to what these other operators have told her what they would do if Fern Sigler were her sister.

"Trial Examiner Batten: Well, you may proceed. I think we should have the whole story about these instances, irrespective of who said it."

## 84.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections and motions of the petitioner and

intervener as set forth in the following excerpt from the transcript of the record, Page 1339 (R. I. 328d), to wit:

"Q. Did you consider that second floor company property?

"A. Yes, sir.

"Mr. Lane: That is objected to as calling for a conclusion on the part of the witness.

"Trial Examiner Batten: Well, I think, Mr. Leary, it certainly calls for a conclusion. If you want to let it stand, however, as it is, I will overrule the objection.

"Mr. Ingraham: Respondent moves that all statements as to what Pearl Atchison said be stricken out as not binding on respondent.

"Trial Examiner Batten: Denied. I think the objection goes primarily to the weight that can be given such testimony."

85.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness May Fike to read the minutes of the Dannelly Garment Workers' Union meeting of April 27, 1937, prior to the examination of said witness by counsel for the International Ladies' Workers' Union, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1341, 1342, 1343, 1344, 1345 (R. I. 328e, 328f, 328g), to wit:

[fol. 110] "Q. Now, I show you, Mrs. Fike, what have been identified as Board's Exhibits Nos. 8-1 to 8-11 inclusive, which purport to be notes on a meeting held April 27, 1937, and ask you to read those notes or minutes and, at the conclusion of your reading them will you state to the Examiner whether the things related in those minutes actually happened, to the best of your recollection?

"Mr. Ingraham: Now, Your Honor, I submit that is highly improper procedure for an examination. He can ask this witness what took place at this meeting, or what she heard, but to hand her minutes and have her read the

minutes and refresh her memory or put some ideas into her head, and then have her answer the question Yes or No about the minutes I say is improper.

"Mr. Shepard: Further, Your Honor, there has been no showing that the witness' memory needs to be refreshed. She says she attended that meeting. She should be questioned from her memory of that meeting."

"Mr. Lane: Intervener desires to object on the ground it is an illegal and improper method of examination."

"Trial Examiner Batten: Well, now, as I stated, if Mr. Leary wants to proceed this way, you may go ahead and read it and answer the question."

"Mr. Leary: Now, I will withdraw the question."

"Q. (By Mr. Leary) Who presided at that meeting, Mrs. Fike?"

"A. Rose Todd."

"Mr. Tyler: I would like to ask if the witness has finished reading the minutes."

"The Witness: I haven't finished looking through them."

"Mr. Tyler (interrupting): I think the record ought to show—

...

"Mr. Tyler: I objected, that the record will show that Mr. Leary has handed the witness what purports to be, and I presume is, copies of the minutes of the first meeting, and asked her to read it, and then tell him whether that expresses what happened, and then, after waiting long enough for her to almost read all of them, he then withdraws the question and presents another question as to what happened. Now, that destroys the possibility of ruling on whether it is a proper method of examination to ask her to read the minutes first, and then ask her what happened."

"Trial Examiner Batten: Well, Mr. Tyler, I have already ruled that as far as the Examiner is concerned, Mr. Leary's question was proper. I said it was not improper and I overruled the objection and permitted him to proceed in that manner if he wanted to, and he chose to withdraw the question, which he has a perfect right to do."

[fol. 111]

86.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of the petitioner and the intervenor to Mr. Langsdale, as counsel for the International Union, being permitted to cross-examine the Board's witness, May Fike, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1359, 1360 (R. I. 331), to-wit:

"Trial Examiner Batten: Go ahead, Mr. Langsdale.

"Mr. Lane: Before Mr. Langsdale begins his examination, I desire to renew the objection I made at the time he began his examination of Miss Todd. I don't want to burden the record by being compelled to make that objection with respect to every witness' examination, but I do renew it here so the record is clear that I am not waiving that objection.

"Trial Examiner Batten: Just what was that objection?

"Mr. Lane: I objected to his examination of Miss Todd for the reason that his position as counsel for the International is one in unity with interest of that of the Board, and in view of that fact, he should not be permitted to have a separate examination of the witness the Board produces, separate from that of the Board itself.

"Trial Examiner Batten: Supposing that you be allowed a continuing objection.

"Mr. Lane: I would like the record to show that that objection will continue throughout the trial as to the witnesses the Board produces.

"Trial Examiner Batten: On that matter—and I will make the same ruling.

"Mr. Shepard: Your Honor, may the record show that the respondent makes the same objection and requests the same objection throughout the trial?

"Trial Examiner Batten: You may have the same objection and the same ruling, and a continuing objection."

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) in sustaining the objection of Mr. Langsdale to the witness May Fike testifying concerning the activities around the Missouri, Gernes and Gordon Garment Companies, and a discussion thereof around the Donnelly plant around April, 1937, as set forth in the following excerpts from the transcript of the record. Pages 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425 (R. I. 334q to 334v, incl.), to-wit:

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

"Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the



Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

• • • • •

"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

[fol. 113] "Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons [by] these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

"Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerne's or Gordon's or anything of that sort.

"Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, 'Did anybody threaten you? Did anybody ever commit any violence as far as you were con-

cerned?" I will receive that in this hearing; I don't want that in the form of an offer of proof.

"Mr. Lane: I want to make this further observation with respect to the question I asked:

"I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless, it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union whether founded upon fact or not.

"Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

"Mr. Lane: That was the purpose of my question, to show that fact.

"Trial Examiner Batten: And that matter, of course, will be included in this offer of proof."

[fol. 114]

88.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence of the witness Slotkin over the objections of the petitioner as shown by the following excerpts from the transcript of the record, Pages 1437, 1438, 1439 (R. I. 334W, 334X), to-wit:

"Q. Now, I wonder, Mr. Slotkin, if you would turn to your books and state for the record the date, and the number of chairs delivered since 1935.

• • • • •

"Mr. Stottle: Mr. Examiner, the respondent objects to this upon the ground that it is immaterial as the way the question reads. Certainly, the company has a right to order chairs, and I don't see that it would have any ten

dency to prove or disprove any issue in this case, unless it is identified as certain times and places that would give it some relevancy.

"Trial Examiner Batten: Well, of course, I presume after we get the record of deliveries we can determine whether or not it has any relevancy or whether it has anything to do with this hearing. I will overrule the objection. You may state."

.....

"Q. (By Trial Examiner Batten, interrupting) You mean, those are the original [sheets], or those are copies?"

"A. No, these are the original sheets from my ledger, as far back as I could go."

"Mr. Stottle: Mr. Examiner, we object on the ground those are not the books of original entries, but his original entries have been transferred to these sheets, and, further on the ground that the entries there have not been shown to have been made by this particular witness."

.....

"Q. (interrupting) Pardon me, Mr. Slotkin. Can you tell who ordered those chairs?"

"A. I can't tell you that at all. I have no invoices going back to this particular year. The only record I have is from 1938, August, until now, when I had a regular system installed by an auditor."

"Mr. Stottle: Now, Mr. Examiner, the respondent objects further on the ground there is no showing as to who ordered the chairs that he is purporting to testify about."

"Trial Examiner Batten: Well, he can read into the record what this ledger sheet shows. Now, if there are any further questions, Mr. Foster, I would suggest that you wait until he has read into the record just what this ledger sheet shows."

[fol. 115]

89.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) in admitting the testimony of the witness Slotkin concerning chairs furnished by that company and in permitting said witness to testify concerning the account books and records of that company relative to chairs furnished and in admitting said accounts, ledger sheets and records as exhibits in this proceeding over the repeated objections of the petitioner and intervener for the reason that said evidence is and was incompetent, irrelevant and immaterial to the issues herein, and because there was no showing as to what person or company ordered the chairs referred to in said testimony or paid for same, and because the records and entries testified from were not the original entries and there was not sufficient identification to show the authenticity of such entries or by whom same were made, and because said testimony and said entries and records did not constitute the best evidence, and because it affirmatively appeared that the witness did not know what person, union or company was chargeable with ordering the chairs referred to, and because it appeared from said witness' testimony that the entries concerning chairs ordered by the Donnelly Garment Workers' Union and chairs ordered by the Donnelly Garment Company and chairs if any ordered by the Donnelly Loyalty League and by the Nelly Don Athletic Association and any other chairs furnished to the address of petitioner in the Corrigan Building were all entered under the same general account and no proper or sufficient designation made therein to show which of said organizations ordered or paid for the chairs referred to, for each and all of which reasons said testimony is not binding upon the petitioner and is prejudicial to petitioner and does not support the findings, conclusions or recommendations of the trial examiner and [fol. 116] does not constitute proper or competent evidence upon which the trial examiner or the Board should base findings or conclusions or any order against petitioner.

In connection with the foregoing assignment, petitioner assigns as error the findings, conclusions and recommendations of the trial examiner (and the Board's action in affirming same) contained in the Intermediate Report for the reason that same are based in part upon the incompetent and indefinite evidence of the witness Slotkin.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting the evidence of the witness Slotkin over the repeated and continued objections of the petitioner which objections were directed to the whole line of testimony of said witness and which objections and rulings of the trial examiner are set forth in the following excerpts from the transcript of the record, Pages 1444, 1449, 1450, 1458, 1459, 1460, 1475, 1476, 1478, 1479, 1480, to-wit:

"Mr. Stottle: Mr. Examiner, may it be understood our objection continues to all of this testimony, on the same ground, the witness did not make the entries, doesn't know who ordered the chairs—

"Trial Examiner Batten: You may have a continuing objection Mr. Stottle. (R. I. 337).

.....

"Q. I wonder if you would read whatever information is on those deposit slips pertaining to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. All the way through?

"Mr. Stottle: Do I understand, Mr. Examiner, our objection continues as to this testimony, also?

"Trial Examiner Batten: Yes, it may. (R. I. 339)

.....

[fol. 117] "Mr. Foster: I want to find out, if I can, who paid for these invoices for the use of these chairs; if there is anything on those deposit slips tending to show that, I want it read into the record.

"Mr. Stottle: Well, we add to our objection that this would not be the best evidence of whether the Donnelly Garment Company or the Donnelly Garment Workers' Union paid for them, as to what they might have written on the deposit slips.

"Trial Examiner Batten: Well, of course, I can't tell until I see what he is going to read, Mr. Stottle. (R. I. 340). . . .



"Mr. Patten: I want to make a further objection, and ask a qualifying question, that is, a preliminary question.

"Q. (By Mr. Patten) Mr. Slotkin, did you prepare the deposit slips yourself?

"A. Well, a few of them when the girl happened not to be at work or on vacation.

"Q. Is the person present who prepared the deposit slips? A. No, sir.

"Q. Is she still in the employ of your company?

"A. Well, part of these were prepared before she ever came to work at our company.

"Mr. Patten: Now, the intervener, Donnelly Garment Workers' Union, objects to the reading or introduction of these deposit slips for the reason that they are not the best evidence. Mr. Slotkin did not prepare them himself, and what somebody, some absent person unknown to this intervener may have put on there is not binding on this intervener.

"Trial Examiner Batten: The objection is overruled. (R. I. 340), (P. 1451.)

...

"Trial Examiner Batten: Mr. Langsdale.

#### Cross-Examination.

"Q. (By Mr. Langsdale) Mr. Slotkin, I hand you these pages which have been marked 'I. L. G. W. U. Exhibits 4, 5, 6 and 7' and ask you to state just what they are.

"A. They are the ledger sheets taken from the accounts receivable ledger.

...

"Mr. Langsdale: We offer Exhibits 4, 5, 6, and 7 in evidence.

"Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any persons authorized by the Donnelly Garment Company ordered any particular item on the list; that it is

not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

[fol. 118] "Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

"Trial Examiner Batten: Mr. Patten.

"Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and [kep] on one ledger sheet.

"Trial Examiner Batten: The objections are overruled. They will be received. (R. I. 344.)

...

"Q. Let me have those deposit slips you testified from (The deposit slips referred to were handed by the witness to Mr. Langsdale).

"A. Those are the ones I testified to.

"Mr. Langsdale: Will you mark these as exhibits, please?

"Trial Examiner Batten: I would suggest that you mark those exhibits No. 8, 8-A, B, C, and so forth.

(Thereupon the deposit slips above referred to were marked 'I. L. G. W. U. Exhibits Nos. 8-A to 8-GG, inclusive')

...

"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

"Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore urged, including the fact that they are not the best evidence; that there is no showing by this witness—

"Trial Examiner Batten (interrupting): Now, just a minute, on that point. What would be the best evidence?

"Mr. Stottle: The best evidence I would say, or some of the best evidence, would be an invoice that had been sent to these different persons and the payment of this. This is just a deposit slip in the bank.

"Trial Examiner Batten: You mean the payment—you mean the check it was paid with?

"Mr. Stottle: Well, an invoice that it had been paid with. This is not even the check. It is just a notation on a bank slip.

"Trial Examiner Batten: That is true, but I assume that what we are trying to do here is get a complete record. I presume we will have to take it in part.

[fol. 119] "Mr. Stottle: Well, that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

"Trial Examiner Batten: That doesn't indicate that on these slips, does it?

"Mr. Stottle: But the testimony taken together with these slips indicates that.

...

"Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

"Trial Examiner Batten: If there is no further objection, they will be received.

"Mr. Patten: Intervener makes the same objection as the respondent.

"Trial Examiner Batten: They will be received." (R. I. 347, 348.)

91.

In connection with the foregoing assignment of the petitioner, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the motion of the petitioner to strike the evidence of the witness Slotkin, which motion and ruling are set forth in the transcript of the record, Pages 1483, 1484, (R. I. 348), as follows, to-wit:

"Mr. Langsdale: I think that is all.

"Trial Examiner Batten: Mr. Stottle.

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner [fol. 120] to give any credence to the statements because they are so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

"Trial Examiner Batten: The motion to strike is denied:

92.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike I. L. G. W. U. Exhibits 4, 5, 6, and 7, which motion and rulings are set forth in the following excerpts from the transcript of the record, Pages 1489, 1490, 1491, (R. I. 350, 351), to-wit:

"Q. Isn't it a fact that these ledger sheets, ILGWU Exhibits Nos. 4, 5, 6, and 7, were made up from those invoices or from other records of your Company?

"A. They were supposed to have been made up from the invoices.

"Q. (By Trial Examiner Batten) When you have a person call in for some chairs you immediately write out an order, is that it? A. Yes, sir.

"Q. Is that written out in triplicate, duplicate, or—

"A. In triplicate.

"Q. Then it is from that record that the entries are made on this sheet, is that right? A. That is right.

"Q. Then, you do have an invoice down there for each one of these items?

"A. I don't know, for all of them. You see, our records were destroyed, a lot of them, when I came to work there. After a year I managed to get myself lined up so I could install a regular system.

"Q. You mean, up to a year ago you had no regular invoice records?

"A. Nothing I could go to like I can now.

"Q. Have you anything—

[fol. 121] "A. I might have some old invoices, a few of them, pertaining to those ledger sheets, and I might not.

"Q. What records were destroyed?

"A. The invoices, you see, they are all mixed up.

"Q. You say you destroyed the invoice records?

"A. They were destroyed. I didn't destroy them myself.

"Q. Someone representing your company destroyed them?

"A. Yes.

"Q. In other words, then, you do not have the invoices or the carbons for these invoices running back over a year ago?

"A. No, sir.

"Mr. Stottle: Mr. Examiner, respondent now renews its objection to strike I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7 for the reason that they are not the original entries, but are made up from some other records which were not the original entries.

"Trial Examiner Batten: I think I denied the same motion awhile ago.



"Mr. Stottle: I understand, Mr. Examiner, but this fact has been brought out since then.

"Trial Examiner Batten: You certainly wouldn't expect him to produce invoices that had been destroyed, would you?

"Mr. Stottle: No. But he says these are not the original entries.

"Trial Examiner Batten: Well, that would go to the weight to be given to these.

"Mr. Stottle: May I explain the point is, those original entries might have had Donnelly Garment Workers' Union on the invoice. If we had those it would show who was the person who ordered them.

"Trial Examiner Barren: But, Mr. Stottle, they are destroyed. If the record is destroyed it is impossible to get it."

93.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Slotkin to testify concerning Board's Exhibits Nos. 16-A to 16-E inclusive and in admitting said Exhibits 16-A to 16-E in evidence over the objections of the petitioner, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1508, 1512, 1513, 1514, to-wit:

[fol. 122] "Redirect Examination.

"Q. (By Mr. Foster): Mr. Slotkin, I hand you what has been marked for the purpose of identification as Board's exhibits Nos. 16-A to E, inclusive, and ask you what these are.

"A They are invoices made out to the Donnelly Garment Company.

(Thereupon the invoices referred to above were marked 'Board's Exhibits Nos. 16-A to 16-E, inclusive.)

"Q. Are they carbon copies of invoices that were sent to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. They are supposed to be. They are carbon copies.

"Q. What do you mean by 'They are supposed to be'? Are they or are they not?"

"Mr. Stottle: Mr. Examiner, respondent objects to this as not proper redirect examination. It should have been gone into in chief.

"Trial Examiner Batten: You may proceed.

.....  
 "Mr. Foster: Then, the Board will offer in evidence at this time what has been marked for identification Board's exhibits Nos. 16-A to 16-E, inclusive.

.....  
 "Mr. Stottle: Well, Mr. Examiner, the respondent objects to the introduction of Exhibits 16-A to 16-E, for the reason that they are [testified] to be carbon copies of Intervener's Exhibits 11 and others, whereas, an examination of Intervener's Exhibit 11 shows that they are written in ink and that this is not a carbon copy of it.

.....  
 "Mr. Stottle: Well, the objection is that it is purportedly testified that these are carbon copies of intervener's Exhibits and an inspection of it will show they are not carbon copies at all of this, because the handwriting is entirely different. This is in ink and it doesn't show through on the same working that is on the alleged carbon copy at all, and for the further reason they haven't been identified in such a way as to make them admissible, or to show they are original records.

"Mr. Tyler: The intervener objects on the ground the witness ought to be allowed to examine the original rather than what is alleged to be a carbon copy before he is asked to testify whether they are carbon copies or not.

Trial Examiner Batten: Well, the witness has already testified these are carbon copies, which he has taken out of his office, and if there are any discrepancies I presume this would be the place to explain them, if there is any explaining to do. They will be received."

[fol. 123]

94.

Petitioners assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's motion to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1596, to-wit:

"Q. Did Miss Alexander have an assistant?

"A. Yes.

"Q. Who was that?

"A. Miss Elizabeth Nobles, who, I think, would be called her assistant.

"Mr. Ingraham: I move the answer be stricken out, as the witness says she thinks Miss Nobles would be an assistant.

"Trial Examiner Batten: Well, I presume on cross-examination Mr. Ingraham, you may go into that and see whether there is any basis for the statement. I hardly think at this stage that I would strike out or sustain an objection when the witness says she has an opinion, because I think we have had quite a few of them thus far.

"You may proceed, Mr. Leary."

95.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 17 over the objection of the petitioner which objection and ruling are set forth in the following excerpts from the transcript of the record, Pages 1598, 1599, 1600, to-wit:

"Q. I show you what has been marked for identification as Board's Exhibit No. 17 and ask you to state briefly what that document is.

"A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves;

that is, form letters or letters that were of a similar nature; some of the girls, of course, would transpose those themselves.

.....

"Mr. Leary: The Board offers its exhibit No. 17.

.....

[fol. 124] "Mr. Ingraham: Respondent objects to the introduction of Board's Exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

"Mr. Lane: Intervener makes the same objection and motion.

"Trial Examiner Batten: Mr. Leary, what have you to say?

"Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union, Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographs in the office daily, all handled by the persons Alexander and Nobles.

"Trial Examiner Batten: It will be received."

96.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and refusing to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1603 (R.I. 354b), to-wit:

"Q. Now, with reference to this meeting where Mrs. Reed talked to the employees, I ask you to state in what manner you were advised that the meeting would be held?

"A. I think we were informed by the [heard] of our department.

Mr. Ingraham: I move the answer be stricken out as speculative.

"Trial Examiner Batten: It may stand."

97.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 18 also referred to as Board's Exhibits 18-A to 18-J inclusive, over the objections of the petitioner and intervener, which objections [fol. 125] and rulings are set forth in the following excerpts from the transcript of the record, Pages 1610, 1611, 1613 (R.I. 354e, 354f, 354g), to-wit:

"Q. I show you what has been marked as Board's Exhibit 18, Mrs. Greenhaw, and ask you to state briefly what that is.

"A. This is a copy of the minutes of the meeting of the Donnelly Garment Workers' Union on May 25, 1937.

.....

"(Thereupon, the documents above referred to were marked as 'Board's Exhibits Nos. 18-A to 18-J, inclusive' for identification.)

.....

"Mr. Leary: The Board offers its Exhibits 18-A to 18-J.

.....

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

"Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they 'doctored' those minutes, and now we have what she says is a carbon copy of the minutes she turned over to Marjorie Green, and Margorie Green produces what she says is the original.

"Mr. Lane: Intervener objects to it on the ground that it is not identified.

"Mr. Leary: In what particular?



"Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

"Trial Examiner Batten: It will be received."

## 98.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and refusing to strike upon motions of the petitioner answers of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1615, 1616, (R.I. 354h); to-wit:

"Q. Do you know what Mr. Marvin Price's work was?

"A. Yes.

"Q. Will you please state what it was?

"A. I think he was called custodian, and I believe he was in charge of the ordering of materials of all sorts for that building.

"Mr. Ingraham: I move that the answer be stricken out [fol. 126] as a conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Q. (By Mr. Leary): And when you say 'materials for the building' do you distinguish in your answer from other materials that are ordered in the operation of the business?

"A. Yes. He had no connection with the ordering of piece goods and that sort of thing.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand."

## 99.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting testimony of the witness Mrs. Greenhaw and in overruling the objections and motions to strike of the petitioner and intervener thereto as set forth in the following excerpts from the transcript of the record, Pages 1619, 1620, to-wit:

"Q. (By Mr. Leary): During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?

"Mr. Lane: That is objected to as calling for a conclusion.

"Trial Examiner Batten: You may answer.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled.

.....

"Trial Examiner Batten (interrupting): Well, now, you can just say 'yes' or 'no' to that question, whether you did.

"A. Yes.

"Q. (By Mr. Leary): What was it that you noticed, Mrs. Greenhaw?

"Mr. Ingraham: I make the same objection.

"Trial Examiner Batten: Same ruling.

"Mr. Lane: Intervener makes the same objection.

"A. I noticed that she was more than usually active in contact with the executives of the company.

"Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: [Sam] objection. Respondent makes the same objection — the same motion to strike.

"Trial Examiner Batten: Motion denied."

[fol. 127]

100.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting in evidence testimony of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1622, 1623, 1624, to wit:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

"Mr. Patten: Just a moment, please. I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

"Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

"Q. (By Trial Examiner Batten) Was Miss Todd with this group?

"A: I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

"Q. Now, do you remember about when this was?

"A. I remember, because a meeting took place the same day.

"Q. Well, what meeting?

"A. I am assuming it was the meeting—

"Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred this same day.

"A. There was, a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employees.

"Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

"A. Yes.

"Q. In Mrs. Reed's office?

"A. Yes.

"Mr. Lane: I move to strike it out for the reason that the time is not fixed.

"Trial Examiner Batten: It may stand."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) in admitting in evidence testimony of the witness [fol. 128] Mrs. Greenhaw over the objections of the petitioner and intervenor, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1624, 1625, to wit:

"Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

"A. Yes.

"Q. Do you remember any particular conversation that you had with him?

"A. We had a short discussion of the strike that was being held at Gordon's at that time.

"Q. And what, if anything, was said by Mr. Green—

"Mr. Ingraham (interrupting): I object. It calls for hearsay—

"Mr. Leary (interrupting): Wait until I finish my question, please.

"Q. (By Mr. Leary) What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?

"Mr. Ingraham: I object. It calls for hearsay testimony.

"Trial Examiner Batten: Well, I will overrule the objection as to hearsay, but the thing I am concerned about, I don't want to get into all these other strikes. Now, she may answer the question and then I will determine whether or not it may be stricken.

"Mr. Lane: Intervener makes the same objection, that it is hearsay.

"Trial Examiner Batten: Same ruling."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and permitting the witness Mrs. Greenhaw to answer question over petitioner's objections as set forth in the following excerpt from the transcript of the record, Page 1641, to wit:

"Q. When you first went to work for the Donnelly Company you stated that you were in the returns department. Who was your superior in that department?"

"Mr. Ingraham: I object to that as repetition.

"Mr. Langsdale: She hasn't stated that.

"Mr. Ingraham: It calls for a conclusion of the witness.

"Trial Examiner Batten: I didn't make any note of it— You may answer. I don't think she mentioned anybody."

[fol. 129]

103.

Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) announcing his purpose and refusal to permit testimony of petitioner's employees to the effect that they selected the Donnelly Garment Workers Union of their own free will or to tell the circumstances under which they signed petition marked I. L. G. W. U. Exhibits Nos. 11-A to 11-MM inclusive, and in refusing to admit said exhibits in evidence, and in stating and announcing that the Trial Examiner would not allow petitioner's employees to take the stand and testify that they were dominated and that they did form the Donnelly Garment Workers' Union of their own free will, over the objections of the petitioner and intervener, and in overruling petitioner's motion to strike from the complaint and dismiss the charge that the Donnelly Garment Workers' Union is a dominated union, which rulings, comments, objections and motions are set forth in the following excerpts from the transcript of the record, Pages 1651, 1652, 1653, 1654, 1655 and 1656 (R. I. 355, 356, 357, 358), to wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, I show you a document which has been marked I. L. G. W. U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.



I call your attention to that page of the document which has been marked I. L. G. W. U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do.

...

"Q. This document reads—

"Trial Examiner Batten (Interrupting) Now, are you going to offer it?

"Mr. Langsdale: Yes, I am. Is there any objection?

"Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

"Mr. Langsdale: You can read it better than I can tell you. (Handing I. L. G. W. U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

[fol. 130] "Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten: I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

...

"Mr. Langsdale: I am offering it for the purpose of showing under what circumstances this witness was induced to sign this document, which states that 'Each of us formed our own union and selected our own representatives'.

"Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

"Mr. Langsdale: Then, are you going to permit them to cross-examine her with reference to her signature on there?

"Trial Examiner Batten: I certainly am not.

"Mr. Langsdale: I have no object in offering it except—

"Trial Examiner Batten: (interrupting): Well, Mr. Langsdale my position on this situation is just this—and I have had it come up in about six cases where I have been presented [wither] with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

"There is only one way to determine this question of majority, and that is by an election, which is not involved in this hearing. I am not going to have a parade of witnesses here on this stand testifying, and for that reason I will not accept it.

"Now, I am making that as a very definite statement now, so that all of you, if you have any offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

"Trial Examiner Batten: That is exactly what I mean.

"Mr. Ingraham: Of course, respondent excepts to the ruling.

[fol. 131] "Trial Examiner Batten: Well, I assume that the intervener will, too.

Mr. Langsdale: You have nothing to except to.

"Mr. Lane: Yes, we do. We assume we have an exception.

"Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to test. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

"I am not going to receive it, and—

"Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

"Trial Examiner Batten (interrupting): Do you want to make that motion?

"Mr. Ingraham: Yes.

"Mr. Langsdale: It appears to me this is my offer; not yours.

"Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

"Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

"Trial Examiner Batten: Motion denied."

#### 104.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Mrs. Greenhaw to answer questions and admitting in evidence the testimony of said witness over the objections of the [petitioner] and intervener as set forth in the following excerpts from the transcript of the record, Pages 1661, 1662, and 1664 (R. I. 360, 361), to wit:

[fol. 132] "Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was the meeting at which the Donnelly Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

"Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

"Mr. Langsdale: It seems to me it—

"Mr. Patten (interrupting): The intervener makes the same objection.

"Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

"Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't of course, it won't.

"Mr. Langsdale: I am willing to take that chance.

"Trial Examiner Batten: I think under my ruling that is your privilege.

"Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, for his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The

question itself calls for hearsay and cannot be binding on the intervenor.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: You may proceed.

"Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter)

"A. She did make such a statement."

[fol. 133]

105.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Mrs. Greenhaw to answer questions, and admitting in evidence her testimony in response thereto, over the objections of the petitioner and intervenor, as set forth in the following excerpts from the transcript of the record, Pages 1665, 1666 (R. I. 362), to-wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated that she would close her shop before she would permit it to be unionized.

"Mr. Ingraham: I object to the question for the same reason that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

"Mr. Lane: Intervenor makes the same objection.

"Trial Examiner Batten: I will overrule the objection.

"A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

"Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

"Mr. Ingraham: [Sam] objection.



"Trial Examiner Batten: Objection overruled.

"A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

106.

Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 1673, 1674 (R. I. 366, 367), to-wit:

[fol. 134] "Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is, what did Mrs. Reed say at this meeting.

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech."

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) and the bias and prejudice of the Trial examiner against petitioner indicated thereby, as set forth in the following excerpts from the transcript of the record, Pages 1681; 1682, (R. I. 370, 371), to-wit:

"Q. Now, who are some of the department heads that were engaging in coercion?

"A. Of course, that is a hard thing to answer.

"Q. Well, you are testifying now. Just give the names, please Mrs. Greenhaw, of these people that were engaging in coercion.

"A. Because it was a general feeling—

"Q. (interrupting) I am not—just answer—

"Trial Examiner Batten (interrupting): Just a minute. Let her finish.

"Mr. Ingraham: I object to it as not responsive.

[fol. 135] "Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

"Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

"Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

"Q. (By Trial Examiner Batten) What were you saying?

"A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times by the officials of the company, and I am sure that for years the company had been building up that sort of thing.

"Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

"Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

"Trial Examiner Batten: It may stand."

108.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving and admitting in evidence and into the record the document referred to as Examiner's Exhibit No. 1, and the Examiner's comments upon same, and in permitting the witness Mrs. Greenhaw to testify from and refresh her memory from said document and admitting such testimony herein, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 1713, 1714, 1715, 1716, 1717, 1718, 1719, (R. II 378e, 378f), to-wit:

"Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

'Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office.' Is that right? A. Yes.

[fol. 136]. "Mr. Lane; Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

"Trial Examiner Batten: Yes, you may have a continuing objection.

"of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

...

"Mr. Langsdale: I have only a copy here, Mr. Examiner, shall I identify it and offer it?

"Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

...

"Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

"Trial Examiner Batten: It is received for whatever it purports to be.

"Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

...

"Trial Examiner Batten: Objection overruled.

...

"Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon copy of some statement which she may have signed.

...

[fol. 137] "Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

...

"Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that it a statement that you made, and if so, when?

"A. Yes, this is a statement I made.

"Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

"Mr. Lane: \* \* \* I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

"Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

"Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

"Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

"Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself; or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

"Trial Examiner Batten: Well; the objection is overruled."



In connection with the foregoing assignment, petitioner also assigns as error (and the Board's action in affirming same) the receipt of the document referred to as Trial Examiner's Exhibit No. 1 and to the testimony received concerning same and based upon same from the witness Mrs. Greenhaw, for the reason that same wrongfully and erroneously injected into the mind of the trial examiner prejudice against petitioner, which prejudice and bias later manifested itself in the trial examiner's finds, conclusions [fol. 138] elusions and recommendations in the Intermediate Report.

109.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in refusing to strike answers of the witness Mrs. Greenhaw and in overruling petitioner's and intervenor's objections to the questions propounded to said witness, as set forth in the following excerpts from the transcript of the record, Pages 1729, 1730, to wit:

"Q. (By Mr. Langsdale): Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?"

"A. There were so many incidents that I can hardly recall them.

"Q. Can you recall any one?"

"A. There was hardly a day—

"Mr. Shepard (interrupting): Your Honor, I ask that these answers be stricken.

\*Mr. Leary: Why?

"Trial Examiner Batten: I will not strike them.

"Mr. Stottle: They are so general, your Honor—

"Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

"Mr. Lane (Interrupting): Intervenor objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

"Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the ground that it is not responsive? Are you, the attorney who does not ask the question, going to object that it is not responsive?"

"Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object."

"Trial Examiner Batten: Objection overruled."

"Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word 'coercion', and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do."

"Trial Examiner Batten: Objection overruled."

[fol. 139]

• 110.

Petitioner assigns as error the rulings, action and comment of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 1733, 1734, to wit:

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?"

"A. Yes."

"Mr. Lane: That is objected to as leading."

"Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading question; I have made it so many times. You may have a continuing objection to leading questions."

"Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection."

"Trial Examiner Batten: Of course, I thought it would save all of these interruptions."

"Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions, but unless I make my objection I don't see how the Board or anybody else can tell what I regard as leading questions."

"Mr. Langsdale. The Board is supposed to have some intelligence:

"Trial Examiner Batten: I presume the persons who have to pass on this will know what weight should be given a question, irrespective of whether you think it is leading or not. If the Examiner and the Board feel it is the attorney who is doing the testifying, no weight will be given to it."

111.

In connection with the foregoing assignment, petitioner also assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) throughout the hearing in permitting counsel for the Board and International Ladies' Garment Workers' Union to ask leading questions and place the answers desired in the mouth of the witness, and stating and announcing that testimony in response to such questions would not be given weight, and thereafter in the findings of fact, conclusions and recommendations the trial examiner based same upon the testimony so elicited.

[fol. 140]

112.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection as set forth in the following excerpt from the transcript of the record, Page 1742, to wit:

"Q. Prior to 1933 was there any minimum wage scale at the Donnelly Plant?"

"Mr. Stottle: Respondent objects to that question as being immaterial and relating to a time so remote as not to have any bearing on this issue here."

"Trial Examiner Batten: As to the remoteness, the objection is overruled."

113.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence testimony concerning the Loyalty League and in overruling objections of the petitioner and

intervener thereto, and in overruling continuing objections of petitioner and intervener to all testimony concerning the Loyalty League and permitting the witnesses to continue to testify thereto, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1769, 1770; 1771 (R. H. 378l, 378m), to wit:

"Q. Showing you your bank statement for the month of March, 1937, is it not a fact that a deposit of \$1,000 was made on March 30, 1937?

"A. That is right.

"Mr. Stottle: Just a moment. Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

"We think it is encumbering the record to go into these activities of the Loyalty League.

"We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

[fol. 141] "Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

"Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

"Trial Examiner Batten: That may be incorporated.

"Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the Union is immaterial and irrelevant.

"Trial Examiner Batten: Overruled. You desire a continuing objection, Mr. Patten?"

"Mr. Patten: I do."

114.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence throughout the hearing over the objections and continuing objections allowed to petitioner and intervener of testimony of the various witnesses concerning the Loyalty League and in failing and refusing to exclude said testimony and in taking said testimony into consideration in the findings of fact, conclusions and recommendations of the trial examiner and in refusing to strike same from the record, for the reason that the evidence shows that the Loyalty League, as such, had no part in the formation or administration of the Donnelly Garment Workers' Union and did not assist it in any way, and for the further reason that the evidence shows that the petitioner did not participate in the formation or administration of the Loyalty League and did not act through it in any way, and for the further reason that the evidence affirmatively shows that the Loyalty League's activities were purely of a social character and that all evidence concerning the Loyalty League is immaterial to any of the [fol. 142] issues involved in this proceeding and should not have been taken into consideration by the Trial Examiner in making his findings of fact, conclusions or recommendations set forth in the Intermediate Report.

115.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 19 and in overruling petitioner's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1773, 1774 (R.II. 378n, 378o), to-wit:

"Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official



records of the Nelly Don Loyalty League that you just referred to in your testimony.

"A. That is right.

"Mr. Leary: Board offers its Exhibit 19.

"Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues here, and also that it is not binding on the respondent in any way.

"Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

"Mr. Stottle: Well, I thought it might, I wasn't sure that it would.

"Mr. Patten: The intervenor desires its continuing objection to apply to the note.

"Trial Examiner Batten: It will be received, subject to those objections."

116.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibits Nos. 21-A to 21-O inclusive, and in overruling petitioner's and intervenor's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1793 (R.II. 378w), and 1842 (R.II. 384), to-wit:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

"Mr. Stottle: Respondent makes its continuing objection to these exhibits.

"Trial Examiner Batten: You may have a continuing objection.

[fol. 143] "Mr. Lane: We make our general objection.

"Trial Examiner Batten: That is, the same continuing objection you have made?

"Mr. Lane: Yes.

"Trial Examiner Batten: I will reserve decision on the offer.

.....

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections.

117.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 25 and in overruling the objections of the petitioner thereto as set forth in the following excerpts from the transcript of the record, Pages 1800, 1801, 1802 and 1842 (R.II. 378aa, 384), to-wit:

"Q. Now, I hand you this, what has been marked as Board's Exhibit 25, and ask you to state what it is, if you know.

"A. That is a statement from the First National Bank, the balance of our loan plus the interest.

.....

"Mr. Langsdale: The Board offers its Exhibit 25.

"Mr. Stottle: Respondent makes the same continuing objection to this exhibit.

.....

"Trial Examiner Batten: On Board's Exhibit 25, I will reserve my decision.

.....

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

118.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 26 and in

overruling petitioner's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1807, 1808 (R.II. 378dd), to-wit:

[fol. 144] "Q. I show you what has been marked for identification Board's exhibit No. 26 and ask you to state briefly what that is.

"A. A list of the dates of meetings, the first one beginning May 11, 1937 and ending with April 5, 1938.

• • • • •

"Mr. Leary: The Board offers its exhibit No. 26.

"Mr. Stottle: Respondent objects that it is immaterial and does not seem to throw any light upon the issues in this case.

"Mr. Patten: Intervener has no objection.

"Trial Examiner Batten: It will be received."

#### 119.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in rejecting and refusing to receive in evidence petitioner's Exhibit No. 2, and in sustaining the objections of the Board, and I. L. G. W. U. thereto, and further assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) relative to the exclusion of said exhibit and similar testimony as set forth in the following excerpts from the transcript of the record, Pages 1828, 1829, 1830 (R.II. 378hh, 379), to-wit:

#### "Cross-Examination.

"Q. (By Mr. Ingraham): Mrs. Tobin, you are familiar with the contracts the International has made with garment companies located in Kansas City?

"A. I am.

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

"A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts nego-

tiated in 1937, but have since been renewed with changes. The others are the contracts that are in force now.

"Q. What are the names of the other companies?

"A. Missouri, Gernes, and Gordon.

"Mr. Ingraham: Respondent offers in evidence exhibit No. 2."

"Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and irrelevant. It has no bearing on the issues in this matter that we are trying now.

[fol. 145] "Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

"Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

"Mr. Leary: That is it, yes.

"Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

120.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Wave Tobin to testify in response to question asked by counsel for petitioner and in sustaining the objection of the I.L.G.W.U. thereto, as set forth in the following excerpts from the transcript of the record, Page 1831 (R.II. 379, 380), to-wit:

"Q. (By Mr. Ingraham): I will ask you if that contract did not contain the provision that 'Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than \$15 per week per capita.'"

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the question for all of the reasons heretofore stated as objections to the offer of the [fol. 146] contract itself.

"Trial Examiner Batten: Sustained."

121.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence the stipulation set forth on pages 1838 and 1835 of the transcript of the record with reference to the [to the] portions of the building at 1828-30 Walnut Street which was leased or occupied by petitioner and in overruling petitioner's and intervenor's objections thereto, for the reason that while the parties stipulated as to what the facts were, the petitioner and intervenor objected to said facts being admitted in evidence because same were immaterial to any of the issues herein, which said objections and ruling of the trial examiner are set forth in the following excerpts from the transcript of the record, Page 1836 (R.II. 381), to-wit:



"Mr. Tyler: It is agreeable to me, of course, subject to the objection that it is incompetent, immaterial and irrelevant.

"Mr. Stottle: Mr. Examiner, respondent also objects that it is immaterial. We are stipulating as to the facts.

"Trial Examiner Batten: When asking you about the stipulation I am not asking you to forego any objection. All you are agreeing to is the facts; whether or not they are relevant is an entirely different matter.

"We will proceed."

122.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 20 and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1841, 1842 (R.II. 384), to-wit:

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

.....

[fol. 147] "Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

"Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both that is, your continuing objections."

123.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 27 and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1843, 1844, 1845, to wit:

"Mr. Leary: \* \* \* Now, I offer, Mr. Examiner, what has been identified as Board's Exhibit No. 27, a newspaper clipping from the Kansas City Times under date of May 11, 1937. Is it not a fact, Mr. Ingraham, that you agree that the reporter who took this statement, if called to testify, would testify that the statements that were attributed to Senator Reed were made to that reporter by Senator Reed?

"Mr. Ingraham: That is correct. I am not admitting that Senator Reed made the statements, but just that the reporter would so testify.

"Mr. Tyler: The intervener admits that the reporter would so testify, and objects that nothing that Senator Reed said could in any way be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.

\* \* \*

"Trial Examiner Batten: Well, it will be received on the basis of the allegations that you have in your complaint. As to what bearing it has on the issues, I think would be a matter for the Examiner to determine."

#### 124.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence Board's Exhibit No. 29-A and 29-B and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of record, Pages 1845, 1846, to wit:

[fol. 148] "Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15th, 1937, to and including December 31, 1938.

\* \* \*

"Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct.

"Mr. Tyler: Intervener makes the same objection. It has no tendency to prove or disprove any issues in this case.

"Trial Examiner Batten: It will be received."

## 125.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibits 23 and 24-A, 24-B and 24-C and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1856, 1857 (R. II. 387), to wit:

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24-C.

"Trial Examiner Batten: Board's Exhibits 23 and 24 were those accounts; 23 was the special fund account of the Donnelly Loyalty League and 24 was the general fund account.

"Mr. Stottle: Respondent makes its continuing objection to any of these exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

"Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

"Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

"Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

"Trial Examiner Batten: Well, they will be received."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 22 over the objections of the petitioner and intervener as set forth in the following excerpts from the transcript of the record, Page 1858 (R. II. 387, 388), to wit:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

"Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to exclude Board's Exhibit No. 30 and in failing and refusing to sustain petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1858 and 1859 (R. II. 388), and in later accepting the N. R. A. testimony contained in said Board's Exhibit 30 and permitting the Board to offer evidence under said offer of proof (Transcript of Record, Page 2552; R. II. 598a):

"Mr. Leary: Yes, I have several matters. I have the offer of proof that I desire to make at this time, in connection with certain sub-sections of paragraph 11.

"Trial Examiner Batten: That will be marked Board's Exhibit 30.

...

"Mr. Ingraham: Well, the respondent objects to the exhibit 30 for the reason it is immaterial and irrelevant to any issue in this case, and refers to matters that occurred prior to the passage of the Wagner Act.

"Mr. Tyler: Intervener makes the same objection.

"Trial Examiner, Batten: I will reserve the decision on it."

[fol. 150]

128.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence testimony taken in the so-called N. R. A.-Judge Miller cases, and assigns separately and severally as error the admission in evidence of each and every part of such testimony offered by the Board or by the I. L. G. W. U., and assigns in particular to the admission in evidence of N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB, and to the Examiner's ruling and action in overruling the several objections to said testimony and the several motions to strike said testimony made by the petitioner and intervener (and contained in N. R. A.-Judge Miller case, Exhibit N. 2-A, 2-B and 2-C), as set forth in the following excerpts from the transcript of the record, Pages 1861, 1862 (R. II. 389), to wit:

"Trial Examiner Batten: In accordance with the stipulation, which is marked Board's exhibit N. 1-DDDD, the Board has served upon all of the parties certain testimony taken from the N. R. A. proceeding and the so-called Judge Miller case.

\* \* \*

"The first exhibit, N. R. A.-Judge Miller case exhibit No. 1-A to BBBB is certain testimony which is offered by the Board from the N. R. A. proceedings and it consists of 80 pages.

"N. R. A.-Judge Miller case exhibit No. 2-A, B, and C are the objections and motions of the respondent and intervener to strike the N. R. A. testimony offered by the Board. That is exhibit No. 1-A to BBBB, containing 80 pages, and the following ruling is made, endorsed on exhibit 2-A, B, and C, on sheet 2-C:—

\* \* \*

"Trial Examiner Batten: \* \* \* The objection is overruled and the motion to strike is denied, and the acceptance



of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections."

129.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's and intervener's objections and [fol. 151] motions to strike the testimony contained in N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB and to the following limitation included in said ruling; to wit: "... and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)", which ruling is set forth on Pages 1861-2 of the record (R. II. 389) and further assigns as error the failure and refusal of the trial examiner to clarify said ruling and designate what parts of said testimony were being received and what parts were being excluded by the above quoted ruling over the objections of petitioner, which objections and rulings are set forth in the following excerpts from the transcript of the Record, Pages 1862, 1863 (R. II. 390), to wit:

"Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

"Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

...

"If there is any question about it after you go over it, I will be very glad to clarify it."

In connection with the foregoing assignment, petitioner calls attention to the fact that the trial examiner later refused to clarify the above quoted ruling and overruled petitioner's motion therefor.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence N. R. A.-Judge Miller case Exhibit 5-A to 5-GG inclusive, and in overruling petitioner's and intervenor's objections thereto and motions to strike same (as contained in N. R. A.-Judge Miller case Exhibit 6-A, 6-B and 6-C), as set forth in the following excerpts from [fol. 152] the transcript of the record, Page 1864 (R. II. 390a), to wit:

"Trial Examiner Batten: \* \* \* N. R. A.—Judge Miller Case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

"Exhibit No. 6-A, B, and C, the objections and motions to strike, of the respondent and intervenor.

"Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects."

In connection with the foregoing assignment, petitioner also assigns as error the limitation contained in the ruling and action of the trial examiner (and the Board's action in affirming same) that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects", for the reason that said ruling and limitation renders it vague and indefinite what portions of the testimony referred to the Examiner intended to and did receive or exclude and what portions of said testimony the Examiner considered in arriving at his findings of fact, conclusions and recommendations, and petitioner makes this assignment to each and every ruling of the trial examiner to which said above quoted limitation was appended.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence N. R. A.—Judge Miller case Exhibit 9-A to 9-CC inclusive, and in overruling the objections of the petitioner and intervener thereto, and in denying the motions to strike said testimony of the petitioner and intervener, and further assigns as error the limitations contained in said ruling, and set forth in the following excerpts from the transcript of the record, [fol. 153] Page 1865, (R. II. 390a, 390b), to-wit:

"Trial Examiner Batten: \* \* \* 9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

"In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

"The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects. The objections being marked 10-A, consisting of one sheet, and the rulings entered thereon."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence N. R. A.—Judge Miller case Exhibits 13-A to 13-R inclusive, and in overruling the objections of the petitioner thereto (contained in Exhibit 14), and further excepts to the limitation included in said ruling, as set forth in the following excerpt from the transcript of the record, Page 1866, (R. II. 390b), to-wit:

"Trial Examiner Batten: \* \* \* NRA-Judge Miller Case Exhibits 13-A to 13-R, consisting of 18 pages, is certain testimony from the Judge Miller case offered by the Board.

"Exhibit 14 is the objections by the respondent to 13-A to 13-R, and the following ruling:

"Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, and, further, it is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects."

134.

Petitioner assigns as error the ruling of the trial examiner (and the Board's action in affirming same) sustaining the Board's motion of June 21 to amend the complaint; which ruling is set forth on page 1870 of the transcript of the record, (R. II. 390d).

[fol. 154]

135.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth on page 1870 of the transcript of the record, (R. II. 390d) permitting the Board to present the witness referred to in Board's exhibit No. 30.

136.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain or rule upon petitioner's motion to dismiss the Complaint in its entirety (Board's Exhibit 1-FFFF) submitted at the close of the Board's case. (Page 1872), and in failing and refusing to sustain or rule upon the oral demurrer or motion to dismiss of the intervener made at the close of the Board's case (Page 1873), and further assigns to the ruling and action of the trial examiner in requiring petitioner to proceed with its case prior to a ruling upon its said motion to dismiss, as set forth in the following excerpts from the transcript of the record, Pages 1872, 1873, 1889, 1890, 1891, (R. II. 390d, 390e, 390f), to-wit:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

"Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

"Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence [introduced], if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' [fol. 155] ers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any decree, order, or judgment affecting the rights and interests of the intervener.

.....

"Mr. Stottle: \* \* \* of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in.

.....

"Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

"That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;



"And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, financial aid or other aid to the Donnelly Garment Workers' Union;

"No basis has been laid that the union is not a bona fide labor union, with all of the rights guaranteed such union under the Wagner Act:

"And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees, and is not entitled to representation of all of the employees in collective bargaining.

"Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler—\* \* \* will be considered in connection with the disposition of the motion."

137.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing to sustain or rule upon petitioner's motion to dismiss each of the separate paragraphs of the Complaint which motion was marked Board's Exhibit 1-GGGG and was made and filed at the close of the Board's case (Page 1874) (and argued at Pages 1874 to 1889 inclusive), and further assigns the ruling and action of the trial examiner in requiring petitioner to proceed with its case and evidence prior to a ruling upon said motion, as set forth in the following excerpts from the transcript of the record, Pages 1874, 1889, (R. II. 390e, 390f), to wit:

[fol. 156] "Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

"Trial Examiner Batten: The first is a general motion, and this is a specific motion.

"Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

"Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

.....

"Mr. Stottle: \* \* \* Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

123.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to strike from the record all the evidence upon each and all of the various paragraphs of the Complaint and in failing and refusing to sustain petitioner's motions therefor, contained and set forth at the bottom of petitioner's motion to dismiss, and in requiring petitioner to proceed with its case and evidence prior to a ruling upon said motion to [stike], as set forth in the following [excepts] from the transcript of the record, Page 1889, to-wit:

"Mr. Stottle: Then, at the bottom of our motion we have moved that the Examiner strike from the record all evidence upon the various paragraphs which the Examiner does dismiss.

\* \* \* \* \*

"Mr. Stottle: The motion goes to striking all evidence on the other paragraphs that you may dismiss, as well as (s).

"Trial Examiner Batten: I will reserve decision on that.

\* \* \* \* \*

"Mr. Stottle: \* \* \* Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know —

"Trial Examiner Batten: I will tell you now, and I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in later

failing and refusing to sustain petitioner's said motion to [fol. 157] strike all the evidence introduced under each and all of the paragraphs of the Complaint and in permitting said evidence to remain in the record, and further assigns as error the action of the trial examiner in taking said evidence into consideration in his findings of fact, conclusions and recommendations set forth in the Intermediate Report.

139.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to clarify his rulings upon the N.R.A.-Judge Miller case testimony and in denying petitioner's request for such clarification, as set forth in the following excerpts from the transcript of the record, Pages 1891, 1892, to-wit:

"Trial Examiner Batten: .... Mr. Stottle, you have something further?"

"Mr. Stottle: This has reference, Mr. Examiner, to your ruling made this morning on the N.R.A. and Judge Miller case testimony submitted by the Board.

"In substance the ruling was the same on all of them, and reads: '... the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings. It is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.'

"Of course, we are somewhat in a dilemma to understand just what we are required to meet there.

"Trial Examiner Batten: I would say, Mr. Stottle, if there is the least doubt in your mind, you submit your evidence and then I will tell you whether it is material or not.

"Mr. Stottle: You mentioned that there are certain subjects you do not want to go into. If you could just tell us what subjects you mean —

"Trial Examiner Batten: I think the record is clear on that. If it is not, I will clear it up as we go along."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in limiting and excluding evidence offered by the petitioner as set forth on Pages 1903 and 1904 of the transcript of the record, and further assigns as error the ruling and comment of the trial examiner therein set forth to the effect that the testimony in N.R.A.-Judge Miller case exhibits Nos. 1 to 16 with reference to the discharge of certain employees (except Tubbesing, Fry and Brooks) should be stricken, and in thereafter considering said testimony so stated to be stricken, and basing his findings of fact, conclusions and recommendations thereon, for the reason that said rulings and action of the Trial Examiner were highly misleading, unfair and prejudicial to petitioner, and in preventing petitioner from putting in evidence concerning the matters stated by the trial examiner to be stricken by the said witness then on the stand, to-wit, Mrs. Elizabeth Reeves, and by other witnesses which petitioner might have called if said misleading ruling had not been made, as set forth in the following excerpts from the transcript of the record, Pages 1903, 1904 (R.II. 396, 397), to-wit:

"Q. I will ask you, Mrs. Reeves, if among the 300 employees that were laid off there was Ellen Fry, Tillie Shirlee, Pauline Lutz, Mamie Tubbesing, Thelma Owen, Glynn Brooks, Nora McKee, Olive Thompson —

"Trial Examiner Batten (Interrupting): Now, are we interested in that entire list?

"Mr. Ingraham: Your Honor, the next question I intend to ask Mrs. Reeves is whether or not over half of these people were called back to work.

"Trial Examiner Batten: Oh, well, then, I thought perhaps, you —

"Mr. Langsdale: If he is permitted to ask that we certainly want to disprove it on rebuttal.

"Trial Examiner Batten: You go ahead and make your objections and I will pass upon the objections when they are made.

[fol. 159] "Mr. Ingraham: That is just what I don't understand. I understood Mr. Langsdale and the Board have offered evidence regarding these people, and their offers have been received.

"Mr. Leary: Not regarding all of the persons you have named, I suggest you read Board's exhibit No. 30 and note that it includes only three names.

"Mr. Ingraham: But you submitted evidence on more than those three people, and the evidence has been received, as I understand it. You submitted evidence on about ten of them.

"Trial Examiner Batten: You mean in some of those other exhibits this morning?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Of course if there is other evidence there with respect to their discharge it should be stricken out, shouldn't it, Mr. Leary?

"Mr. Leary: If it is limited strictly so their discharge, yes, but as to discriminatory remarks, and so forth, made to these persons, I don't think it should be stricken.

"Trial Examiner Batten: I will say now, if there is any such testimony, Mr. Ingraham, in the exhibit, it certainly wasn't my intention that any of that testimony should remain in there with respect to the discharge of these people except those three, and in the N.R.A.-Judge Miller case exhibits Nos. 1 to 16 if there is any testimony of that nature it may be stricken; with respect to the discharge of all of the persons except — what were those three, Mr. Leary?

"Mr. Leary: Tubbesing, Fry, and Brooks."

#### 141.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence petitioner's exhibit No. 6 for the purposes for which same was offered by petitioner and in limiting its admission in evidence, as set forth in



the following excerpts from the transcript of the record, Pages 1907, 1908, 1909, 1910, 1911 (R.II. 398, 399, 400, 401), to-wit:

"Q. (By Mr. Ingraham): Mrs. Reeves, I hand you respondent's Exhibit 6, which is a newspaper article appearing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wave Tobin, and ask you if you have read that article."

"A. I did."

"Mr. Ingraham: The respondent offers in evidence Exhibit 6."

\*\*\*\*\*

[fol. 160] "Trial Examiner Batten: For what purpose?"

"Mr. Ingraham: For the purpose of showing the situation at this time, and I will offer other articles up until April 23d, when Sylvia Hull and May Fike had their difficulty at the plant."

\*\*\*\*\*

"Trial Examiner Batten: Well, I might say that I don't like trying these Labor Board cases in the newspapers."

"Mr. Ingraham: Well, Mr. Leary offered a long article of Senator Reed's, and it set out the background and the history, and I am showing our side of this background. Now I am asking this witness—"

\*\*\*\*\*

"Trial Examiner Batten: Well, is this all contained in the Judge Miller testimony?"

"Mr. Ingraham: Yes."

"Trial Examiner Batten: Well, then, I will say you had better submit it as a transcript from that."

"Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony, but I would like to examine this witness in regard to whether or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence."

\*\*\*\*\*

"Mr. Ingraham: I am setting it up for the purpose of showing the situation.

"Trial Examiner Batten: The general situation?

"Mr. Ingraham: At that time.

"Trial Examiner Batten: You mean, background?

"Mr. Ingraham: That is right.

"Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

"Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

"Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influence that would—

"Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background, as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that [fol. 161] testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I have said so many times in this case, become the picture.

"Mr. Ingraham: I don't think it will result in that.

"Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expects to use it for."

Petitioner assigns as error the rulings, action and comment of the trial examiner (and the Board's action in affirming same) concerning petitioner's exhibit No. 7, and

the failure and refusal of the trial examiner to give consideration to said exhibit, and his comments that said exhibit "doesn't prove anything", as set forth in the following excerpts from the transcript of the record, Page 1917 (R. II. 404), to-wit:

"Trial Examiner Batten: On the basis I received the other one, and this one, it doesn't open up anything, because I am not receiving it to show the truth or the untruth of any statements in the article, merely as an article from the newspaper for whatever it is worth.

"Mr. Langsdale: If it is worth anything, it is worth rebutting.

"Trial Examiner Batten: I say, there is nothing to rebut if it doesn't prove anything. If it doesn't prove the truth or the untruth of any statement contained in it, I don't think it opens up anything.

"Mr. Leary: For all of your reasons, I don't think it should be admitted, Mr. Examiner.

"Trial Examiner Batten: Well, I am admitting it, Mr. Leary, as I told Mr. Ingraham, and he is offering it for the purpose of showing the background of what was occurring about that time, and on that basis I will receive it."

## 143.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to admit in evidence petitioner's exhibits 8-A and 8-B for the purpose for which same were [fol. 162] offered by petitioner and stated by counsel for intervenor, and in refusing to consider same for such purposes or upon such issues, and in limiting the purposes for which same were admitted, as set forth in the following excerpts from the transcript of the record, Pages 1918, 1919, 1920, to-wit:

"Mr. Ingraham: Well, then, respondent offers Exhibits 8-A and 8-B.

.....

"Mr. Langsdale: Now, I assume that this letter is admitted that it will be admitted as one of the newspaper articles, not as a matter in controversy that we have a right to prove was true, or they would have a right to prove was false, unless the matters are within the issues as have been defined by this complaint and by the Examiner? This letter goes into a great many matters that are not before the Examiner here, and if they are going to try to offer—set up an automaton and knock him down, we want to be permitted to prop him up again.

"Mr. Ingraham: Well, if Your Honor please, the Board and Mr. Langsdale have offered evidence that Mrs. Reed read this letter to a meeting, and they have brought the letter into issue.

"Mr. Langsdale: We didn't read the contents.

.....

"Trial Examiner Batten: Well, of course, I don't propose to try the truth or the untruth of any of the statements in the letter.

"Mr. Langsdale: That is all I want to know.

"Trial Examiner Batten: I think I said at one stage in this case that, granting that everything that was said in the answer were true, it still wouldn't answer the charge of an unfair labor practice. In other words, everything that is said might be true, and still there would be an unfair labor practice. I will receive it on the same basis that I received the others, and for the additional reason that it is the letter referred to in the meeting of March 18, 1937, which has been testified to here, I think by two or three different people.

.....

"Mr. Tyler: Well, I ask your Honor to receive it also on the ground that it would throw some light on the question of whether these employees were dominated by their employer and forced to form a labor union, or whether this letter and the effect it had on them was not a cause of their forming a labor union.

"Trial Examiner Batten: Well, I will reserve my decision on that, Mr. Tyler, because I assume that you will want to go over a good many of these and make an offer all together.

[fol. 163] Wouldn't you prefer to do that, without waiving any of your rights?"

144.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence referred to as the "N. R. A. Testimony" offered by the Board and I. L. G. W. U. at various times and in various forms during the hearing, and over the continuing objections of the petitioner and intervener, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1978, 1979 (R. II. 423, 424), to-wit:

"Mr. Stottle: Mr. Examiner, respondent, of course, objects to this N. R. A. testimony as being immaterial because it related to matters long before the organization of the Donnelly Garment Workers' Union and before the passage of the National Labor Relations Act, and we would object to these questions on the same basis that we have to the N. R. A. testimony.

"Trial Examiner Batten: Mr. Stottle, I don't know whether the record is clear or that it is understood, but, as I recall, you made a continuing objection to all testimony that refers to a time prior to the passage of the Wagner Act. And, if I am not mistaken, Mr. Tyler, you joined in that objection.

"Mr. Tyler: I intended to.

"Trial Examiner Batten: I think the record is quite clear.

"Mr. Stottle: May it be understood, if it isn't clear our objection is made?

"Trial Examiner Batten: If it isn't clear, it is understood that you have an objection; and Mr. Tyler, also."



Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner or intervenor to introduce evidence relating to a comparison of the contracts between petitioner and intervenor union with contracts made between the I. L. G. W. U. and other garment manufacturing companies in Kansas City and [fol. 164] vicinity, and in refusing to permit testimony as to the terms and conditions contained in such contracts between the I. L. G. W. U. and other garment companies in Kansas City and vicinity, which rulings and comments are set forth in the following excerpts from the transcript of the record, Pages 2033, 2034, 2035 (R. II. 435, 436), to-wit:

"A \*\*\* Then the vacation schedule came up, and while I individually, of course, learning this from Mrs. Reed when I came out here nearly seven years ago, believed in vacations, inasmuch as this clause is the only kind that I know of in the needle work industry contract, I wasn't sure that the company should bind itself to give vacations with pay, which prior to that time had been optional and in the discretion of the management.

"Trial Examiner Batten: Now, just a moment, Mr. Keyes. Mr. Keyes, volunteering that statement there, I thought that we had the understanding that—I mean, I advised you, rather—I don't know as you all agree with me—that I didn't want to get into a comparison of this contract with other contracts, and I limited the Board's testimony the other day, when I asked them the direct question, if all the questions which they asked applied only to how the contract was negotiated.

"Now this, of course, brings up—Mr. Keyes volunteering this statement that no needle contract has such a phrase any place, you are beginning to compare the contracts.

"The important thing with this contract, and with this union, is not what is in this contract. The important

thing is, did the union, in good faith, and the respondent, sit down and negotiate a contract?

"Now, a union can negotiate any terms they see fit in a contract. So, the only question here is did Mr. Tyler and the committee representing the Donnelly Garment Workers' Union negotiate in good faith, did the respondent negotiate in good faith? And, having arrived at an agreement, they put it in writing and signed it. Therefore, Mr. Keyes' statement about this particular paragraph in comparing it with some other contract, I don't consider that it should be accepted, in accordance with my prior ruling. Therefore, I won't receive it.

"Mr. Tyler: Your Honor has in mind that the intervener asserts that comparison with other contracts is valid and admissible evidence to show the genuine negotiation of this contract and the genuineness of the desires of the employees to negotiate in this matter, and have their own union, and we except to your ruling that comparisons are not proper.

"Trial Examiner Batten: Yes, I understand your position, Mr. Tyler, and I only say in answer to that, this: that the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union or any other union can negotiate any contract they want. I mean, they could go out here and negotiate a contract for less [fol. 165] wages, less salaries, no vacations, and abominable conditions, if the union wanted to do it. So I say that I am not concerned about comparison of these contracts. I am concerned about, did they actually negotiate, and agree on these things, and when they agreed, sign the contracts; and, of course, as I understand it, that is the matter, Mr. Tyler, which you except to?

"Mr. Tyler: Yes.

◇ "Mr. Ingraham: Respondent excepts."

Petitioner assigns as error the rulings and actions of the trial examiner (and the Board's action in affirming same) in sustaining objections to the testimony offered by petitioner, as set forth in the following excerpts from the

transcript of the record, Pages 2071, 2072 (R. II. 445), to-wit:

"Q. Did Fern Sigler leave after that conversation?

"A. She left. I think it was some 30 minutes, or something like that, after she got to the office.

"Q. State whether or not she then performed services for the International Ladies' Garment Workers' Union?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Ingraham) Do you know whether or not she called on the customers of the Donnelly Garment Company in Kansas City?

"Mr. Langsdale: I object to that as immaterial. This is not an 8 (3) case.

"Trial Examiner Batten: Sustained."

#### 147.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in denying to petitioner the right to examine witness with respect to Sylvia Hull's being in Atlantic City, and the Examiner's comments that said testimony was not material, and his action in striking same from the record, as set forth in the following excerpts of the record, Pages 2073, 2074 (R. II. 446), to-wit:

[fol. 166] "Q. Did you later learn that Sylvia Hull was in Atlantic City attending the International Ladies' Garment Workers' Union convention?

"A. I did.

"Q. Was there a newspaper article in the papers regarding that?

"A. There was.

"Q. (By Trial Examiner Batten) You mean, she was there at the time these calls were made?

"A. No. She was there after the calls were made trying to locate her.

"Trial Examiner Batten: Then, I don't see what that has to do with it. I don't think it has anything to do with it if it was after these calls were made.

"Mr. Ingraham: If Your Honor please, I want to show that we not only called but later learned she was in Atlantic City, and therefore there wouldn't have been any use to call, if she was there.

"Trial Examiner Batten: I don't think that is material at all. The testimony about her being in Atlantic City, if it was after your attempts to call, may be stricken out."

148.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence Petitioner's Exhibit No. 10 for all purposes as offered by petitioner and in limiting its admission in evidence, and in ruling and stating that the Examiner would receive same "for just what they are worth, as newspaper articles and that is all", as set forth in the following excerpts from the transcript of the record, Pages 2076, 2077, 2078 (R. II. 448, 449), to wit:

"Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is."

"A. It is 'Justice', published by the International Ladies' Garment Workers' Union.

"Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

"Trial Examiner Batten: What date is that?

"Mr. Langsdale: June 1, 1937.

"Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

"Mr. Ingraham: Yes, indeed. This is the official paper of the International.

"Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

[fol. 167] "Mr. Ingraham: Even though it is published by the International?

"Trial Examiner Batten: I don't care whom it is published by.

"Mr. Ingraham: Wouldn't that be considered as an admission?

"Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the same basis you offered the other newspaper articles, I will receive it on that basis.

"Mr. Ingraham: I offer it, of course, for all purposes.

"Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and [they] you may have your exception.

"Mr. Ingraham: I am still offering it for all purposes; and you are not allowing it to be received for all purposes?

"Trial Examiner Batten: That is correct. But my question still is, do you want me to receive it on the same basis I did receive exhibits Nos. 6 and 7, having refused to receive it for general purposes?

"Mr. Ingraham: Yes.

"Mr. Stottle: Mr. Examiner, may it not also be received to show that she said these things, even though the things she did say were not true?

"Trial Examiner Batten: Mr. Stottle, I assume this article is in the same class as the other two, it speaks for itself.

"Mr. Stottle: You let Senator Reed's statement in to show that he said certain things, didn't you?

"Trial Examiner Batten: It was stated, in connection with that, that if the reporter were here he would testify Senator Reed said those things. I will receive it on that basis, although that is not Mr. Ingraham's offer. I am not going to receive these newspaper articles as proving or disproving anything that is said in them. I will receive them for just what they are worth as newspaper articles, and that is all."



Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Baty to answer the question, "Did you do all you could to stop the demonstration", referring to the alleged demonstration at the Donnelly [fol. 168] plant on April 23, 1937, as set forth in the following excerpts from the transcript of the record, Page 2153 (R. II. 483, 484), to wit:

"Q. (By Mr. Ingraham) Was any other official of the company there at the time?

"A. There was not.

"Q. Did you do all you could to stop the demonstration?

"Mr. Langsdale: Now, just a moment. I still think that this answer should be based upon the question as to whether or not he knows. The fact that no other executive was there at the time doesn't show that it wasn't planned the night before or the night before that.

"Trial Examiner Batten: It may stand for whatever value it has. What was the last question?

(Whereupon, the last question was read by the reporter).

"Trial Examiner Batten: That certainly is repetition. You went into quite some detail yesterday about what he did when he went up on the floor with these different girls, and sent the others back, and so forth. Of course, if you want him to just categorically deny everything that is in the complaint, just read it to him and then I have no objection to him denying it, Mr. Ingraham."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving testimony concerning I. L. G. W. U. exhibit No. 17, over the objections of the petitioner as shown on Pages 2306 to 2310, inclusive, of the transcript of the record, and in considering said evidence in arriving at his findings of fact, conclusions and recommendations contained in the Intermediate Report.

## 151.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 30 and in overruling petitioner's and intervener's objections thereto and their motions to reject said offer of proof and the N. R. A. testimony in said offer, and in permitting witness to testify under said offer of proof, as set forth in the following excerpts from the transcript of the record, [fol. 169] Pages 2367, 2368 and 2552 (R. II. 598a), to wit:

"Mr. Stottle: Mr. Examiner, the Board has filed an exhibit, Marked 30, which is an offer of proof concerning Ellen Fry, Glynn Brooks, and Mamie Tubbesing. The respondent has prepared an objection and motion to reject that offer of proof, which we now wish to present to you. "I might say that this objection was made in the name of the respondent only but that this morning Mr. Tyler, representing the intervener, has added a clause at the bottom stating that he joins in the objection and motion, and that appears upon the paper which we are presenting.

"Trial Examiner Batten: This will be marked Board's exhibit No. 1-HHHH. I will take the original with me.

"Mr. Tyler: I wish to state I have gone over this paper and considered it, and wish to join in it, as indicated by the signature at the bottom.

"Trial Examiner Batten: It will be taken under advisement.

...

"Trial Examiner Batten: Now, on the matter of the Board's Exhibit L-III, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked 'Board's Exhibit 30', the objections are overruled and the motion to strike is denied, which means, Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner to call and examine witnesses concerning the circulation and signing of the petition of March 2, 1937, and in limiting the number of witnesses which might be called to testify concerning same and in requiring petitioner to make an offer of proof thereon as to other witnesses, as set forth in the following excerpts from the transcript of the record, Pages 2457, 2458 (R. II. 552), to wit:

"Q. Did you sign the petition that was circulated March 2d?

"A. I did.

"Q. Did any officer of the company ask you to sign that petition?

"A. No.

[fol. 170] "Trial Examiner Batten: Well, now, Mr. Ingraham, do I understand that you intend to call a large number of individual employees?

"Mr. Ingraham: Yes, your Honor.

"Trial Examiner Batten: To testify?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, now, of course, I don't propose to have a large number called to testify to this point. You may call a reasonable number, and use your own judgment as to what is reasonable.

"Mr. Ingraham: All right, your Honor.

"Trial Examiner Batten: And make an offer of proof on the entire balance, if you want to, but I am not going to listen to all of them, but you use your own judgment as to what you think is a reasonable number, and at that time I think we can probably determine what will be done."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objection to the following question asked by

petitioner of the witness Atherton, as shown in the following excerpt from the transcript of the record, Page 2463 (R. II. 553), to wit:

"Q. Mr. Atherton, did you witness any violence at the Missouri, Gernes, or Gordon plants during the month of March, 1937?"

"Mr. Leary: I object to that as immaterial."

"Trial Examiner Batten: Sustained."

154.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the Board's objection to question asked by petitioner of the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2466, 2467 (R. II. 555), to wit:

"Mr. Langsdale: Is that the March 18th meeting?"

"Mr. Ingraham: March 18th."

"Q. (By Mr. Ingraham) Did the employees take any action at that meeting?"

"A. They did not."

"Q. Did the violence at the Missouri, Gernes and Gordon plants increase from that date on?"

"Mr. Leary: I object to that as immaterial."

"Trial Examiner Batten: Sustained."

[fol. 171]

155.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in sustaining objections of the Board and I.L.G.W.U. to question asked of the witness Atherton by counsel for the intervener on Page 2500 of the record, and in refusing the offer of proof made by counsel for the intervener on Page 2501 of the record, concerning the disturbances at the Missouri, Gordon and Gernes factories prior to March 18, 1937, and to the question asked of said witness by counsel for intervener on Page 2501 of the record as to the state of mind of employees of the Donnelly Garment Company in regard to said conditions at the

Missouri, Gordon and Gernes plants, and the comments of the trial examiner concerning said matters, and the ruling and action of the trial examiner in making the same ruling upon petitioner's objection to said ruling and to petitioner's offer of proof on said matters; as set forth in the following excerpts from the transcript of the record, Pages 2500, 2501, 2502, 2503, 2504, 2505, 2506 (R.II. 574, 575, 576, 577), to-wit:

"Q. (By Mr. Tyler): Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Tyler): What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

"Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

"Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

"Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937; was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to [fol. 172] organize their own labor union.

"Mr. Leary: I will object to the offer on the same grounds.

"Trial Examiner Batten: The offer is refused.



“Mr. Langsdale: The International Ladies Garment Workers' Union objects to the offer upon the ground that it includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

“Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

“Trial Examiner Batten: Well, of course, I assume — I don't know — I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, is conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

“Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor [practive], irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make that statement just in explanation of my ruling.

“Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties.

I do say that there is no more important fact, and no fact approaching in importance the fact of that caused the employees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

"I submit that the employees asserting that they formed the plant of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer domination, [fol. 173] but was fear and dislike of what the International was doing in its campaign to organize garment workers in Kansas City.

"I take it I have an exception to your Honor's ruling without —

"Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

"Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

"Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

"Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

"Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't they can have any motive they please.

.....

"Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

156.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit testimony offered by intervener concerning the visit of employees of petitioner to Chief Higgins of the police force or to call and examine witnesses with reference thereto, as set forth in the following excerpts from the transcript of the record, Pages 2523, 2524 (R-II. 585, 586), to-wit:

"Q. Was there any particular incident that you know of that brought about the visit of the employees to Chief Higgins of the police force?

"A. Yes; the rumored threats that we would be next on the list. . .

"Trial Examiner Batten: Now, just a moment. I think that is covered entirely by the offer of proof that I have asked for, Mr. Tyler.

"Mr. Tyler: Very well.

[fol. 174] "Trial Examiner Batten: I mean, in those paragraphs which Mr. Langsdale has asked to have stricken, as I recall it, those matters are covered.

"Mr. Tyler: Your Honor rules this witness cannot testify as to the visit of the employees to Chief Higgins and what it was for?

"Trial Examiner Batten: I have merely said, when I receive those offers of proof, which includes this matter, I will then determine how much, if any, of what we will take testimony upon."

157.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling petitioner's objection to questions asked the witness Atherton by Mr. Langsdale, as set forth in the following excerpts from the transcript of the record, Pages 2572, 2573, to-wit:

"Q. (By Mr. Langsdale): I will ask you if you heard Mrs. Reed make this statement [this] is contained in the affidavit on page 861:

"In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet to discuss ways and means to protect themselves'.

"And then skipping —

"Mr. Ingraham (interrupting): I object to Mr. Langsdale skipping. If he is going to read from this affidavit, he ought to read it so it is connected up.

"Mr. Langsdale: I am merely asking this witness if he heard this statement read.

"Trial Examiner Batten: Well, I think that thus far in the hearing, there have been many instances where a witness has been asked whether they heard a certain thing, and certainly, they haven't read the entire affidavit or the entire testimony, either.

"Q. (By Mr. Langsdale): Skipping down to the last sentence of that paragraph, taking it up with that sentence, in which she says:

"... I went to the meeting and told them that the Company's attorneys would consider what legal steps might be advisable in the event the union carried out its threats."

"Did you hear Mrs. Reed make that statement?"

[fol. 175]

158.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's objection to question asked the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2573, 2574, to-wit:

"Q. Now, you have been here in the court room waiting to testify how long, Mr. Atherton?

"Mr. Ingraham: I object to that. It is immaterial to any issue in this case. He has a perfect right to be in the court room.

.....

"Trial Examiner Batten: You may proceed, and I will determine whether it has anything to do with it."

159.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same), refusing to permit petitioner to produce further witnesses or testimony concerning the March 18 meeting and forcing petitioner to make offers of proof as to other witnesses concerning same, as set forth in the following excerpts from the transcript of the record, Page 2607 (R.II. 610d, 611), to-wit:

"Trial Examiner Batten: Mr. Stottle, I will permit this witness to testify, but I certainly don't intend to listen to any more witnesses of what occurred at the March 18th meeting, because thus far in the record, there is apparently no dispute. I mean, there is no use of going on with an unlimited number of witnesses telling about a meeting. So if there is any further witness to be offered on the March 18th meeting, it will have to be in the form of an offer of proof.

"Mr. Stottle: Mr. Examiner, of course, the respondent's position is that if that matter is controverted, we are entitled to show by any number of witnesses as to what did happen.

"Trial Examiner Batten: Well, —

[fol. 176] "Mr. Stottle (Interrupting) And we are willing to make an offer of proof as to this Witness, or succeeding witnesses.

"Trial Examiner Batten: I say, you may proceed with this witness, but I am telling you now that if you had in mind offering any further witnesses about this March 18th meeting, I don't propose to go into it.

"Mr. Stottle: Well, in view of your Honor's ruling, we will make offers of proof as to other witnesses."

160.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) sustaining objections to questions asked the witness Nellie



Stites and the comments, ruling and action of the trial examiner refusing to permit petitioner to introduce testimony that the Donnelly Garment Workers' Union and its executive committee represent the free choice of petitioner's employees as their bargaining agency concerning wages, hours and working conditions in the Donnelly plant and requiring petitioner to submit offers of proof concerning said matter, as set forth in the following excerpts from the transcript of the record, Pages 2610, 2611, 2612 (R. II. 612, 613, 614), to wit:

"Q. Does that union, the Donnelly Garment Workers' Union and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: What was the ruling, Mr. Examiner?

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the the complaint, and we submit that one of the best ways of finding out whether a person did a thing of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

[fol. 177]. "Trial Examiner Batten: (Interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'Is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

"Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?"

"Trial Examiner Batten: I didn't even intimate such a thing.

"Mr. Tyler: I understood you to say that their testimony as to what they wish, would be either of no value or extremely little value.

"Trial Examiner Batten: I didn't say any such thing, I don't think.

"Mr. Tyler: I misunderstood you, then.

"Trial Examiner Batten: The record will state what I said in my remarks.

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?"

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

161.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) sustaining objection to question asked the witness Mrs. Stites, and refusing to permit petitioner to introduce evidence concerning strikes and disturbances caused by the I. L. G. W. U. at the Gordon, Gernes and [fol. 178] other garment factories in Kansas City and the effect thereof upon the employees of petitioner and requiring petitioner to make offers of proof concerning said matters, as set forth in the following excerpts from the transcript of the record, Pages 2612, 2613 (R. II. 614), to wit:

"Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane or someone, representing you every day of this hearing, have you not?"

"Mr. Tyler: Yes."

"Mr. Stottle: But Mr. Examiner, I have never discussed with Mr. McGonaghey one word as to what his negotiations were—"

"Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

178

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the objection of the Board to questions and answers of the witness Jack McGonaghey, as set forth in the following excerpts from the transcript of the record, Page 2838 (R. II. 700), to wit:—

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?"

"A. Yes Sir."

"Q. What were the principal subjects of discussion?"

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while."

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?"

"Mr. Leary: I object to that as immaterial."

"Trial Examiner Batten: Objection sustained."

179

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit evidence concerning strikes and violence at other garment plants in Kansas City and the effect thereof upon petitioner's employees [fol. 101] and in striking the answer of the witness Jack

other witnesses have testified to, I don't think it it necessary.

"Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying for the reason you have indicated, that is an important matter; and for the reasons Mr. Tyler has stated.

"Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

"Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

"Trial Examiner Batten: I will reserve my decision.

"Mr. Tyler: For the present, the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

"Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

"Q. (By Mr. Tyler): Do you know, Mr. McGonaghey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

"A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

"Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

"A. No, sir.

"Q. Were you present at any negotiations of June 21 or June 22, 1937?

"Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is apparent that no one could determine now whether he has any new matters or not.

"Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

[fol. 190] "Mr. Stottle: Yes.

"Trial Examiner Batten: And you, Mr. Tyler?

"Mr. Tyler: I have been absent a day or two.

testify to new matters, and the Examiner's refusal to permit the offering and questions of witnesses upon said matters to determine whether such witnesses can testify as to matters not theretofore covered by other witnesses, and in overruling petitioner's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 2833, 2834, 2835, 2836, 2837 (R.I. 697, 698, 699), to wit:

"Q. (By Mr. Tyler): I hand you Board's exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

"Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have two members of this executive committee testify in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

.....

"Mr. Stottle: Mr. Examiner, respondent would say in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

[Vol. 189] "Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before examining his witness, so that he should be able to judge that I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four



"She said, 'Glyn, we have a lot of old girls out we would have to place before we place you'."

"I said, 'Well, I would like to work if there is any chance for me to'."

"She said, 'If you do we will not recognize your union. You will have to join ours'."

"I said that was all right, I didn't expect her to."

"Mr. Ingraham: I move that the answer be stricken out. It goes beyond the allegations of the complaint."

"Trial Examiner Batten: Objection overruled."

175

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain motion to dismiss and demurrer to the evidence made by intervenor at the close of petitioner's case (Page 2813 of transcript of record) and in later overruling said motion and demurrer.

176

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit intervenor to offer further witnesses or testimony concerning the meeting of March 18, 1937, as set forth in the following except from the transcript of the record, Page 2832, to-wit:

"Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any more witnesses testifying to it, unless you have something you want to go into that has not already been covered."

177

[fol. 188]

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit intervenor to offer further witnesses or testimony concerning the negotiations between the Donnelly Garment Workers' Union and petitioner concerning the contract of May 27, 1937, and the Examiner's action, ruling and comments that further witnesses will not be permitted on said subject unless they can

may submit your offer of proof as though the witnesses were here and present.

.....

"Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses."

173

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence I.L.G.W.U. Exhibit No. 16 over the objections of petitioner and intervenor, as set forth in the following excerpts from the transcript of the record, Pages 2771, 2772 (R.II. 677), to-wit:

"Mr. Stottle: Mr. Examiner, respondent is not objecting to the lack of identification, but respondent does object that it does not tend to prove or disprove any issue in the case and would therefore be immaterial.

.....

"Mr. Tyler: We have no objection to the offer of the picture, but we do object if the picture is [forever] with the inference that it is of the meeting of April 27, because the context shows it refers to a meeting of May 11.

.....

"Trial Examiner Batten: It will be received for whatever value it has."

174

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike out answers of the witness Glynn Brooks Yarnell, as set forth in the following excerpts from the transcript of the record, Page 2808, to-wit:

"A. I told her I had been informed that the old Donnelly girls, that is, the union girls were being reinstated, and I told her I would like to come back to work if that was true.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpt from the transcript of the record, Page 2712 (R.I. 658), to-wit:

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put in an offer or proof, because I don't think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness."

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit petitioner to offer further witnesses concerning the meeting of April 27, 1937, [fol. 186] and requiring petitioner to submit offers of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2731 and 2766 (R.I. 662, 676), to-wit:

"Trial Examiner Batten: Mr. Stottle, I think after this witness covers the meeting of April 27, unless there are some new matters, I will not hear from any further witnesses about it, because I think there has been sufficient testimony about that meeting. As I said in other instances, you might call another witness and ask the questions and show that the witness was not permitted to answer, or you

"Q. (By Mr. Patten) Have you ever heard any employee complain that they didn't want to join the Donnelly Garment Workers' Union?

"A. No, sir.

"Mr. Leary: I object to that as calling for hearsay, and also that it is immaterial.

"Mr. Patten: I asked what she heard.

"Trial Examiner Batten: I will sustain the objection. It is immaterial, and I will override the matter of hearsay.

"Mr. Leary: I move the answer be stricken.

"Trial Examiner Batten: It may be stricken."

170.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objections to questions asked Mrs. Martin by counsel for intervenor, as set forth in the following excerpts from the transcript of the record, Pages 2703, 2704 (R. II. 655), to-wit:

"Q. Do you know of any employee that is dissatisfied with the committee of the Donnelly Garment Workers' Union as their bargaining agent?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

[fol. 185] "The Witness: May I answer that question?

"Trial Examiner Batten: No.

"Q. (By Mr. Patten): Are you afraid of the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Patten): Were you afraid of that union in the spring of 1937?

"Mr. Leary: [Same] objection.

"Trial Examiner Batten: Same ruling."

"Mr. Tyler: Yes, sir.

"Q. (By Mr. Tyler) Mrs. Stiles, did any officer of the company, or representative of officers of the company, tell you about these things you have said you heard about, or did you hear them from other people?

"Mr. Jankasdale: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

168.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objections to questions asked the witness Mrs. Lynn Davis by counsel for respondent, as set forth in the following excerpts from the transcript of the record, Page 2676 (R. II. 640a, 641), to-wit:

"Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as cumulative.

[fol. 184] "Trial Examiner Batten: Sustained.

"(By Mr. Stottle) Did you hear Mrs. Reed state that she would never let the International Union into her plant?

"Mr. Leary: [Same] objection.

"Trial Examiner Batten: Sustained."

169.

Petitioner assigns as error the rulings and action of the trial examiner in sustaining objections to question asked the witness Mrs. Martin by counsel for intervenor and striking the answer made thereto (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 2702, 2703 (R. II. 654, 655), to-wit:



told that they were coming over to our plant—the expression they used was 'to get us next.' And there was quite a bit of fighting over there, and tearing of clothes off. Naturally, we felt we needed some protection of some kind.

"Mr. Langsdale: I ask that all of that part of the answer about what had been going on [other] there be stricken out as not responsive to the question.

"Trial Examiner Batten: It may be stricken."

167.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Nellie Stiles to answer questions propounded by counsel for the intervenor and in refusing the offer of proof made by intervenor thereon, and in sustaining objection to subsequent [fol. 183] question asked said witness, as set forth in the following excerpts from the transcript of the record, Pages 2650, 2651 (R. II. 631, 632), to-wit:—

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gernes plants?

"Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into these matters, Mr. Tyler.

"Mr. Tyler: Then, intervenor joins in the same offer of proof on this matter just offered by the respondent.

"Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

"Mr. Tyler: Yes.

"Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

"Mr. Tyler: And also, repeat the offer of proof which intervenor made on the same subject heretofore.

"Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-1111, and you are not referring to the fifth page of that?

"Mr. Langsdale: I object to that as immaterial.  
 "Trial Examiner Batten: You may ask your questions, but then I will ask you to present an offer of proof.  
 "Mr. Tyler: We will be very glad to join in the offer of proof, if the Examiner doesn't want to hear that.

"Trial Examiner Batten: I didn't overlook that you were asking the questions, but I thought in order to have [fol. 182] the record indicate it, your question and the answer could go in, but then I intended to ask for an offer of proof.

"Mr. Tyler: Your Honor rules that she may answer this question?

"Trial Examiner Batten: Yes.

"Mr. Langsdale: The International Ladies' Garment Workers' Union wants to object on the ground that it calls for a conclusion of the witness and is invading the province of the Examiner, without any basis for showing that this witness knew what the effect was upon any other employee than herself.

"Mr. Tyler: I think it is a matter of fact which one constantly in a plant can testify to, as to the general attitude in the plant as to certain things—if she knows.

"Trial Examiner Batten: Well, if she knows, that is always different.

"Mr. Langsdale: He didn't put that in his other questions.

"Trial Examiner Batten: You may answer.

"A. We had been reading all of these articles in the paper about the strikes over there—

"Mr. Langsdale (interrupting): I object to that and ask that it be stricken as not responsive.

"Trial Examiner Batten: You may answer.

"A (continuing)—and we had talked to a lot of the girls and a lot of them had been talked to by people who worked over at these other plants, and of course, we were

N. 1-1111, as set forth in the following excerpts from the transcript of the record, Pages 2637, 2638 (R. II. 626, 627), to wit:

[fol. 181] "Q. Mrs. Stites, I will ask you to state whether you knew or heard of strikes—

"Trial Examiner Batten (interrupting): Now, Mr. Stottle,—that finishes that offer?

"Mr. Stottle: That finishes that part of it.

"Trial Examiner Batten: Well, I don't think it is at all necessary for her to answer any questions about the strikes and trouble in the other plant, because that, if you have an offer ready on that, I can pass on that one now.

"Mr. Stottle: Well, it is the last page of what I have given you.

"Trial Examiner Batten: It is all in one, is it?

"Mr. Stottle: I put it all together as an offer of proof by this witness.

"Trial Examiner Batten: ... Now, as to the last page, which is page 5, of the offer of proof on the Gernes and Gordon factories, and that other matter, that offer, as in accordance with my rulings, several rulings during the hearing, is refused."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking out the answers of the witness Nellie Stites made in response to questions asked her by counsel for the intervenor, as set forth in the following excerpts from the transcript of the record, Pages 2648, 2649, 2650 (R. II. 630, 631), to wit:

"Q. Did you have knowledge of the disturbances down at the Gordon Gernes, and Missouri Plants in the spring of 1937?

"A. Yes, sir, I did.  
Q. What was the effect on the Donnelly Garment Company employees of these disturbances at the Gordon Gernes and Missouri plants in the spring of 1937?

"Q. (By Mr. Stottle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?

"A. None.

"Trial Examiner Batten: Well, now just a moment. The answer may be stricken."

164

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit the witness Nellie Stites to testify concerning the domination of the Donnelly Garment Workers' Union by the petitioner and concerning coercion upon or interference with the petitioner's employees concerning their free choice of a union or bargaining agency and requiring petitioner to make offers of proof concerning said matters and when petitioner proceeded to make offers of proof thereon, stating and ruling that such offers are outside said matters and in requiring as a condition precedent to the making of such offers of proof that the petitioner prepare "appropriate questions", as appears in the transcript of the record, Pages 2620 to 2631 (R. II. 618 to 624) and in later rejecting the offers of proof made by petitioner and joined in by intervenor (page 2632) (R. II. 631) as to said witness Nellie Stites and as to other witnesses.

165

Petitioner assigns as error the ruling and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner to ask the witness Nellie Stites questions regarding strikes and disturbances at other garment plants and in refusing the offer of proof made by petitioner concerning said matters as to said witness Nellie Stites contained on Page 5 of Board's Exhibit

[fol. 179] "Trial Examiner Batten: Well, now, that is with respect to what ruling? The one on the meeting of March 18th?"

"Mr. Stottle: No, as with respect to the ruling that she joined this of her own free will, if your Honor will permit her to testify that she did, and other witnesses to testify on the question of whether she did join of her own free will, of course, we would prefer to call the witnesses."

"Trial Examiner Batten: Well, what do you mean, reverse my ruling? Is that what you mean?"

"Mr. Stottle: Well, I thought you were intimating that I was making a different offer of proof."

"Trial Examiner Batten: Well, I do think it is different [that] even my ruling. You say to this witness, 'You join of your own free will.' Now, you offer to show that the respondent in no way coerced or intimidated this witness. I don't think that is quite the same thing, do you?"

"Mr. Stottle: Well, I will ask the question."

"Trial Examiner Batten: I say, do you think it is the same?"

"Mr. Stottle: I do think so. If she joined of her own free will, I don't think she was coerced by the Donnelly Garment Company."

"Trial Examiner Batten: Well, of course, if you think it is the same thing, and that is what you mean by what you just said, then I will reject the offer."

"Mr. Stottle: Well, I would rather ask the question and have your Honor rule it out or let it in."

"Trial Examiner Batten: I don't care to pass upon it. If you think it is the same thing, I will reject that part of the offer."

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking the answer of the witness Nellie Stites to the question asked, as set forth in the following excerpts from the transcript (the record, Page 2617 (R. II. 617), to wit:



Q. (By Mr. Stottle) Mrs. Stittes, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

Mr. Leary: I object to that for the reason that it is immaterial.

Trial-Examiner Batten: Sustained.

Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed this union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter. You may make such offer as in your opinion is necessary to protect the interests of your client.

163

Petitioner assigns as error the ruling, action and comments of the trial examiner (and the Board's action in affirming same) made while the witness Nellie Stittes was on the stand, as set forth in the following excerpts from the transcript of the record, Pages 2615, 2616, 2617 (R. U. 615, 616, 617), to wit:

Mr. Stottle: Mr. Examiner, as to the two matters which you have excluded this witness from testifying to, respondent desires to make this offer of proof:

Respondent offers to prove by this witness that if permitted to answer appropriate questions, she would testify that at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon her by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives or supervisory officials, or anyone representing the management, to cause or influence her, or which did cause or influence her to join or support the Donnelly Garment Workers' Union.

189

Petitioner assigns as error the rulings and action of the trial examiner in overruling the motion of petitioner to strike Board's Exhibit No. 18 (18-A to 18-J) (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Page 3068, to-wit:

[fol. 302] Mr. Ingraham: I move to strike exhibit No. 18. There has been no showing that the exhibit was in the possession of the witness Greenhaw up to the time that she testified, and it now appears it has been in the possession of other parties who have not appeared and testified it is the document which Elsie Graham Greenhaw transcribed.

"Mr. Langsdale: Of course Elsie Graham Greenhaw had the exhibit in her hands when she testified, and said this was the carbon of the minutes she took and turned over to Mr. Walsh's office."

"Trial Examiner Batten: Objection overruled."

190

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in denying petitioner's motion to strike the answers of the witness Rucker set forth on pages 3069 and 3070 of the transcript of the record.

191

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the objections of petitioner and intervenor to question asked the witness Mrs. Fike and in permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Pages 3077, 3078 (R. III. 734-C), to-wit:

"Q. Was there ever any change, as far as you knew, in the duties of the instructors at the Donnelly Garment Company plant from the time you went to work there in 1926 or 1927 up to the time you left there in May, 1937?"

"Mr. Lane: There is no showing who wrote this article, Board's exhibit No. 2, or that it was accurate."

....

"Mr. Tyler: There is no evidence that the Donnelly Garment Workers' Union or the Nelly Don Loyalty League had anything to do with that publication, regardless of who got it out."

"Trial Examiner Batten: Of course, there is the allegation in here, I believe that the Loyalty League is a labor organization—in the complaint."

"It will be received for whatever value it has. (Thereupon the editorial above referred to was marked for identification 'I. L. G. W. U. Exhibit No. 19', and received in evidence)."

....

"Mr. Langsdale: .... I offer I. L. G. W. U. Exhibit No. 19."

"Mr. Shepard: Respondent is making the same objection previously made."

"Trial Examiner Batten: Subject to the objection both parties have made, it is received."

188

Petitioner assigns as error the rulings and action of the trial examiner in denying the motion of intervenor to strike out all the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, as set forth in the following excerpt from the transcript of the record, Page 3062 (R. III. 734b), to-wit:

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervenor."

"Trial Examiner Batten: The motion is denied."

(Thereupon the photographs above referred to were marked for identification, Intervener's Exhibit No. 20-A to 20-K, inclusive.

"Mr. Tyler: That is an affidavit for an election.  
"Trial Examiner Batten: You are offering these?

"Mr. Tyler: Yes, sir.

"Trial Examiner Batten: It will not be received. You may incorporate it in the offer of proof if you want to.

"Mr. Ingraham: We have made an offer—

"Trial Examiner Batten: (interrupting) I say, this is refused, and if any of the parties want to incorporate the material in an offer of proof, you may do so.

"Mr. Tyler: Very well.

"Trial Examiner Batten: It is refused now as an offer of proof."

187.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence I. A. G. W. U. Exhibit No. 19 over the objections of the petitioner and intervenor, as set forth in the following excerpts from the transcript of the record, Pages 3057, 3058, 3059, 3060, 3061, 3062 (R. III. 734, 734b); to-wit:

"Mr. Langsdale: I offer from the February 16th issue of Liberty magazine the only editorial in that magazine. I do not offer anything except the one-page editorial.

"Mr. Ingraham: We object. It is immaterial to any issue in this case. There is no showing that this is the editorial referred to.

"Mr. Tyler: We object. There is no showing this is the [for 201] editorial that was read.

"Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers' Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

"Trial Examiner Patten: The offer is refused.

"Mr. Stottle: Respondent excepts to the striking of the answer and to the refusal of the offer."

185

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objection to and striking answer of the witness Lyle Jeter, as set forth in the following excepts from the transcript of the record, Page 2998 (R.II. 718c), to-wit:

"A. Miss Todd said as she called the names of the ones to be on the nominating committee, to stand up, and she called my name.

"Q. Were you surprised or not when that happened?"

"Mr. Leary: Oh, I object to that as immaterial.

"Trial Examiner Patten: Sustained.

"Mr. Leary: And I move that the answer be stricken.

"Trial Examiner Patten: It may be stricken.

186

[Vol. 200]

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence Intervenor's Exhibit No. 20-A to 20-KK inclusive (also referred to as Intervenor's Exhibit No. 18), and in refusing same as an offer of proof, as set forth in the following excepts from the transcript of the record, Pages 3042, 3044, 3045, (R.III. 730, 731), to-wit:

"(Mr. Tyler) I now offer in evidence the exhibit which I will ask the stenographer to mark Intervenor's exhibit No. 18, lettering it from A to whatever that results in.



Q. (By Mr. Patten): Mr. Jeter, did you interpret that as a threat to the employees of the Donnelly Garment Company?

Mr. Jeter: I object to that as calling for a conclusion.

Trial Examiner Patten: Objection sustained.

Mr. Patten: The only thing lacking, apparently, under your definition of a threat, was for them to address him personally and say, 'You, Mr. Jeter, are going to be—'

Trial Examiner Patten: (interrupting): Now, Mr. Patten, if a Donnelly employee was threatened personally, or any violence committed, I will receive that testimony. The fact that this man happened to be down there where something was going on and heard some remarks—I think there were some remarks like that in the paper, too, but I don't consider that matter an issue in this case. I think that is a matter between the employees. I don't see how the company can be held responsible for that situation.

Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—insofar as we show these circumstances which motivated them we negative the contention of the Board and the International.

Trial Examiner Patten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question.

Mr. Patten: Mr. Examiner, the intervenor offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that those acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union [stated] its drive to organize the Donnelly plant.

Trial Examiner Patten: And the other witnesses' testimony would be substantially the same as this testimony?

first.

"Trial Examiner Batten: I want to hear the attorneys so that it is not subject to cross-examination or rebuttal?"

"Mr. Langsdale: Is this answer to be stricken then,

money would be relevant.

ended this man, or something of that sort, I think that testi- occurred a thousand times. If somebody personally threat- personal threat to him. That is something that may have around and heard this remark.

employee of the Donnelly Garment Company, standing

"Mr. Patten: That was a personal threat. He was an

it.

don't think this sort of testimony has anything to do with Donnelly Garment Company, that should be in here. I threats of violence committed as to any employee of the

"Trial Examiner Batten: Yes, if you have any actual

Donnelly Garment Company we could put that in.

cases involving actual threats to persons employed by the

"Mr. Patten: I understood you had said if we had

covering, I don't think that is material to this case.

"Trial Examiner Batten: The point you have finished

not been covered.

"Mr. Patten (interrupting): This is a point that has

[Vol. 198] "Trial Examiner Batten: Now, Mr. Patten—

"A. I did.

at which the Donnelly Garment Workers' Union was or-

"Q. Mr. Jeter, did you take any part in the meeting

"A. I talked it over with the employees.

"Q. (By Mr. Patten): Did you report that at the

what we are going to do down at Donnelly's?

ing her? And Miss Tobin said, 'That's just a sample of

somebody said, 'Isn't that awful, the way they are treat-

"A. As this old lady got up and started in the building

"Q. Tell me what they said, and who it was.

"A. Threatened the Donnelly Garment Company.

"Trial Examiner Batten: We are not interested in the reason for joining."

.....

"Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answering the questions as to the effect the testimony of Velma Dowdy had on her?"

"Trial Examiner Batten: Yes."

184.

[Vol. 197]

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding evidence by the witness Lyle Jeter concerning violence to employees at other garment companies in Kansas City and threats that similar violence would be done at the Donnelly plant and as to the effect thereof upon the petitioner's employees and further assigns as error the comments of the trial examiner concerning the materiality of such evidence, and his action and rulings in sustaining objections thereto, and in striking answers given, and refusing intervenor's offer of proof thereon, as set forth in the following excerpts from the transcript of the record, pages 2993, 2994, 2995, 2996, 2997 (R.H. 718a, 718aa, 718bb), to-wit:

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up —

"Trial Examiner Batten (interrupting): Tell me how you were threatened."

"Mr. Langsdale: I move that that part, the last part of his answer be stricken."

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened."

"A. I have to tell a little bit about this first part, if I may."

"Q. (By Trial Examiner Batten): Did somebody threaten you personally?"

[Vol. 196] "Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probably or improbably should throw some light on whether they are telling the truth.

"If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union —

"Trial Examiner Batten (interrupting): She wouldn't be forced to pay it unless she joined it, would she?

"Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

"Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

"Mr. Tyler: I submit the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit the witness Mrs. Wei-gand to answer questions propounded to her by counsel for intervenor, and in sustaining objections of counsel for the I.L.G.W.U. thereto, and in ruling and announcing that such evidence is not material to the issues in this case, and in refusing to receive further testimony from said witness or other witnesses upon said matters, as set forth in the following [excerpts] from the transcript of the record, Pages 2939, 2940, 2941, 2942, 2943 (R.II. 718b, 718c, 718d, 718e), to-wit:

"Q. Did you ever hear Velma Dowdy testify in that case?  
 "A. Yes, I did.  
 "Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

"Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

"Mr. Tyler: That is what I am leading up to.

"Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

"Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are \$10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the employees have a right to select any union they want to select, and pay any dues they want to pay.

.....



"Trial Examiner Batten (interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants."

"Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it."

"Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?"

"Mr. Tyler: I contemplate calling a large number."

"Trial Examiner Batten: I can tell you now, I do not intend to listen to them."

"Mr. Tyler: Well, on the present question—"

"Trial Examiner Batten (interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, 'Now, is this the union you want?' And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it? That is the question we are trying to determine."

"Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?"

"Trial Examiner Batten: Yes; but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election where they can vote and no one know how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them."

"Mr. Tyler: Does that ruling go into effect immediately preceding this witness?"

"Trial Examiner Batten: That is right."

"Trial Examiner Batten: If you intend, as Mr. Ingram indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

181

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of petitioner and intervenor to question asked the witness by Mr. Langsdale on cross-examination as set forth in the following except from the transcript of the record, Page 2864, to wit:

"Q. (By Mr. Langsdale) Did you know at the Judge Miller hearing the position of the International Ladies' Garment Workers' Union was that Judge Miller of the District Court had no right to pass upon whether or not the Donnelly Garment Workers' Union was legally formed, and for that reason defendants put in no testimony tending to show it was legally formed?

"Mr. Tyler: I object to the question as calling for a conclusion of law by this witness.

"Mr. Stottle: Respondent makes the same objection.  
"Trial Examiner Batten: He may testify, if he knows.

182

[fol. 194]

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) refusing to permit the offer of further witnesses or testimony upon the question of domination of petitioner's employees in regard to their union affiliation, as set forth in the following except from the transcript of the record, Pages 2922, 2923, 2924 (R. II. 718a, 718b), to wit:

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union?  
"A. Well, in the first place—

ver of material and competent evidence and of a fair trial upon the charges contained in the Complaint, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 2857, 2858, 2859 (R-11, 7046, 7047), to wit:

"Q. Do you know of any employee in the plant ever complaining that pressure was brought on him or her with regard to his or her affiliation with any labor union?  
"A. No, sir.

"Mr. Tyler: That is all.

"Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up—in other words, if you contemplate calling I, 200 [fol. 193] employees and asking them that question, it is an entirely different matter.

"On the meeting of April 27, which this witness testified to, unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it an offer of proof.

"As to the March 27 to April 2 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

"Mr. Tyler: And as to the other matter, the free will of the witnesses, of course, Your Honor understand my position, that that is as much a fact as his indignation or whether he has a broken leg and the best way to get that is to ask him about it.

I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

“Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?”

“Trial Examiner Batten: Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer, or the question, material.”

“Mr. Langsdale: I move to strike the answer of the witness to the last question.”

“Trial Examiner Batten: It may be stricken.”

[fol. 132]

“Mr. Stottle: Respondent does except to the striking of this answer.”

180.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit further witnesses or testimony on the question of interference with the free will of petitioner's employees in regard to their labor union activities and in regard to the meeting of April 27, 1937, and in regard to the meeting of approximately March 27 to April 5, 1937, and in commenting that evidence on said matters is not deemed material by the Trial Examiner, for the reason that such comments show the bias and prejudice of the trial examiner and show that he did not intend to consider such evidence and that he did not consider such evidence in arriving at his findings of fact, conclusions and recommendations, and for the further reason that said rulings deprived the petitioner and inter-

McConaughy, as set forth in the following excerpts from the transcript of the record, Pages 2838, 2839, 2840, 2841, 2842 (R. II. 700, 701, 702, 703), to wit:

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

"A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were [talking] place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

"And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

"Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees organization by unions and matters of that kind.

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

"Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then,



ing, I am not going back, I don't think, now, on this record, and revise it from page 1 up to 3200, whatever it is, including all of the numerous exhibits. (pp. 3632, 3633) (R.VII, 2337).

"Mr. Langsdale: My point is this, Mr. Examiner; if there is going to be any contention that the records they bring in here are the originals, I think it would be well to send someone representing the National Labor Relations Board down there this afternoon to see where they get them and how they get them and whether or not these are people who have been there any length of time.

[fol 216] "Trial Examiner Batten: I don't think so. Mr. Langsdale, because I think the burden is entirely on Mr. Ingraham's shoulders. He signed this stipulation and agreed to this. It is in the record and has been used since—what is it now?—since July 1939.

"If it isn't correct, I think the burden is on you, Mr. Ingraham, to produce whatever is necessary to show that it is correct. You agreed to the stipulation.

"Mr. Ingraham: I agreed to the stipulation but—

"Trial Examiner Batten: Now, on that basis, as I said awhile ago, we are going to proceed on the assumption that this is correct.

"Mr. Langsdale: I say, if they are going to come in later with a lot of—

"The Witness: I didn't say this was incorrect. I said it was incorrect in the way it is put together. Sometimes the heading is carried over and sometimes refers to the employees on the next page, when it shouldn't. (p. 3634) (R.VII, 2337-38).

"Mr. Ingraham: I didn't make up this exhibit. I produced the pay rolls and Mr. Leary took the pay rolls and checked them.

"Trial Examiner Batten: Whether you prepared them or not you were the attorney who signed the stipulation.

"Mr. Ingraham: Yes. The Board had these pay rolls before them—

"Trial Examiner Batten: I would suggest that the original pay rolls be marked and photostats be provided.

"Mr. Langsdale: If the Examiner please, I object to that change from the record as it now exists, until we look at the record and see what actually happened. . . . (p. 3613, 3614) (R. VII. 2324, 2325).

"Mr. Ingraham: I was asked to produce these pay roll records, and I did produce them, and the next thing that appears is this stipulation.

"Trial Examiner Batten: Mr. Ingraham, you signed the stipulation, didn't you?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Then, it seems to me, if there is anything wrong with it, it is up to you folks to check it up—

"Mr. Ingraham: We will produce the pay roll records.

"Mr. Langsdale: I don't agree with that. I want to rely upon what they did produce in 1939.

"Trial Examiner Batten: You may rely completely, Mr. Langsdale, upon what is in the record, unless it is changed. Unless what is now in the record is corrected, it will remain, and any counsel may use it. . . . (p. 3615) (R. VII. 2325-26).

"Mr. Ingraham: That's true. Miss Weyand, and the Board, as I recall, never challenged the division of the people in the pay roll, there never was any question raised.

"Trial Examiner Batten: Well, we will proceed on the assumption it is correct, until otherwise shown. . . . (p. 3631, 3632) (R. VII. 2336).

"Mr. Ingraham: Mr. Langsdale, we produced the record the last time, that the Labor Board asked for, and I brought them in, and I have a receipt in my pocket.

"Trial Examiner Batten: Well, now, just a minute. I just said we are going to proceed on the basis this record is correct. Now, if the parties who contend it is not, may or may not have an opportunity to present it in this hear-

In connection with the foregoing assignment of error, petitioner calls particular attention to the following excerpts from the transcript of the record, to-wit:

"A. I don't find it.

"I would like to call the Examiner's attention to the fact that I was puzzled about this pay roll list yesterday, and last night I looked up to see why these queer headings would be on certain pages, and I saw the original pay roll that was put in evidence, and apparently when this was copied the pages were not followed. Now, when—

"Q. (By Trial Examiner Batten) Well, do you have the original pay roll? (p. 3013) (R. VII. 2324)

"Mr. Ingraham. We brought in the original pay rolls.

"Trial Examiner Batten: And wasn't this supposed to be a copy of it?

"Mr. Ingraham: Yes. I do not have any recollection of making a copy of those pay rolls. We brought the original pay rolls in.

"Trial Examiner Batten: Whoever made them, they were marked as an exhibit and were received on the assumption that they were a copy of the pay roll. Now, are they a copy or aren't they, Mr. Ingraham?

"Mr. Ingraham: They are a copy, as far as the names and wages are concerned.

"I think this is what actually happened: I was asked by the Board's counsel to produce the pay rolls for their inspection, and I brought up the pay rolls including the ones for the particular exhibits that you were inquiring about yesterday, and the Board took those pay rolls—

"The Witness: The pages were mixed.

"Trial Examiner Batten. Do you mean the Board inserted these titles?

[fol. 215] "Mr. Ingraham: No. But the pages got mixed up.

"The Witness: A title would be carried over to the next page, and the wrong page would be there.

[fol. 213] "Trial Examiner Batten. In other words, she was not a part of any sewing section or department of the plant or the business; is that right?"

"The Witness. She was a part of all of them. She simply went from one place to another, and when there was something missing, she would find out what it was, and then she would go to the notions department, if it was to get more thread, or—"

204

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) with reference to Board's Exhibit No. 28 (being purported copies of certain pay rolls of petitioner, which copies were prepared by the Board), as shown by the transcript of the record, pages 3612 to 3635 inclusive, pages 3688, 3689 (R. VII. 2323-2338, inclusive, 2366-2367), for the reason that such record shows the bias and prejudice of the trial examiner toward petitioner and its counsel and his evident desire to make use of error or mistakes of the Board in copying exhibits furnished by petitioner to the Board and because such record shows the trial examiner's fixed purpose to take said erroneous record as true and not accept testimony of the witness, Mrs. Reed, that same was incorrect, although the error therein was plainly pointed out by both counsel for the petitioner and by said witness Mrs. Reed, and shows the evident purpose and intention of the trial examiner to enlarge the terms of the stipulation with reference to said Exhibit 28 in a manner unfavorable to petitioner, casting the entire burden upon petitioner's counsel for the correctness of said exhibit when the error was wholly that of the Board in copying same, and in representing to petitioner's counsel that same was a true copy and thus obtaining the signature of petitioner's counsel to said stipulation, by reason of all of which the bias and prejudice of the trial examiner against petitioner [fol. 214] and its evidence is shown and the non-judicial attitude of the trial examiner is shown by his refusal to permit correction by the witness of palpable errors in evidence caused by the Board and the correction of which would result in favorable inferences to petitioner and the non-correction of which might be used for the purpose of drawing unfavorable inferences against petitioner.

"Mr. Hogsett: I can't see the remotest connection between that I really have no objection, but I can't see it is at all relevant. I object to it, to save time.

[fol. 212] "Trial Examiner Batten: You may tell us. . . .

"Q. Could you indicate what factors in her experience impressed you with her qualifications for being an instructor?

"Mr. Reed: I think that is a ridiculous waste of time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: I object. It is a ridiculous waste of time.

Petitioner further assigns as error the failure of the trial examiner (and the Board's action in affirming same) to instruct and require counsel for the Board to desist from such questioning upon utterly immaterial and irrelevant matters whereby the record is encumbered therewith and the true issues obscured and the trial examiner's findings and conclusions influenced by immaterial, incompetent and irrelevant evidence, all to petitioner's prejudice.

-203-

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, page 3606 (R. VII. 2319, 2320), as showing the bias and prejudice of the trial examiner towards petitioner and its witnesses and his endeavor to get the witness to make a statement contrary to the facts:

"Q. Turning now to April 1937, was Rose Todd assigned to any department of the plant?

"A. I testified about three times that she went through the plant supplying notions of thread, or whatever supplies might be missing to complete cuts.

"Trial Examiner Batten. Mrs. Reed, the question is, was she assigned to any department? Was she assigned to any definite department or section in April of 1937?

"The Witness. No, her job was just to go through the plant from one section to another.



[fol. 211] "Miss Weyand. I do not intend to pursue this line of questioning further.

"Mr. Hogsett: She always says that, and then—

"Trial Examiner Batten: In view of Miss Weyand's statement that she does not intend to pursue it any further—

"Mr. Hogsett:—there is nothing you can do about it.

"Trial Examiner Batten:—that will dispose of the matter.

"I didn't assume, Miss Weyand, that when you said you didn't intend to pursue that further, you were precluded from asking any further questions if, in your opinion, it was necessary."

Petitioner further assigns as error the action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the Board to examine and cross-examine witnesses at great length upon immaterial, incompetent and irrelevant matters, and when objection is made, permitting said testimony to stand as a result of counsel's statement that she does not intend to pursue the line of questioning further, or the statement that the questions asked are preliminary, or the statements that the questions are asked for the purpose of testing the witness' credibility, as a result of which the record is filled with incompetent, irrelevant and immaterial evidence which has improperly influenced the trial examiner's findings and conclusions adverse to petitioner.

202.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record, pages 3391, 3398 (R. VII, 2310, 2314), to-wit:

"Q. Do your employees have credits for the purpose of purchasing dresses in your retail store, is that a cash transaction?

I. L. G. W. U. after the Trial Examiner had stricken said testimony, to further examine the witness with reference [fol. 210] thereto by reading into the record portions of said stricken testimony; and assigns as error each and all the rulings of the Trial Examiner with reference to said matter, all of which rulings and action of the Trial Examiner and said actions of counsel for the Board and for the I. L. G. W. U. were highly prejudicial to petitioner and show the Trial Examiner's bias against petitioner and his desire to acquit counsel for the Board of said improper examination, by reason of all of which petitioner has been denied a fair and impartial trial.

The matters herein referred to appear in the record at pages 3236 to 3237, 3250 to 3286, 3748 to 3750, 3847 to 3859, 3873 to 3881, 3910 to 3920, 3932 to 3940, and 3947 to 3952, inclusive. (R. VII. 2269-2275, 2283-2307, 2400-2402, 2441-2449, 2454-2460, 2477-2484, 2491-2497, 2497-2501, inclusive).

301.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) set forth in the transcript of the record at pages 3344, 3345 and 3346 (R. VII. 2281, 2282), as shown by the following excerpts therefrom, to-wit:

Q. (By Miss Weyand) Do you know what was the largest number of girls you ever employed in St. Joseph at one time?

A. I do not.

Q. Do you have any idea?

A. Not any very definite idea.

Q. Could you give us an approximation?

A. I really couldn't.

Mr. Hogssett. If it please the Examiner, I object as wholly pointless. We have again run into a line of questions that haven't any bearing on this case at all. It might be of interest if someone were writing a history of the Donnelly Garment Company, but it hasn't anything to do with whether this company dominated, sponsored, or coerced the formation of the employees' union, which is the issue here to try. It is far afield.

has been asked what were his duties at a certain time, and what they were at another time. Now it is asked, to state the differences.

"Trial Examiner Batten: Well, the witness may state what the difference is, in her opinion."

"Mr. Reed: Well, I object to this interminable repetition."

"Trial Examiner Batten: She may tell us what she considers to be the difference."

200

[fol. 209] Petitioner assigns as error the action of counsel for the National Labor Relations Board in introducing in evidence Board's Exhibit 32-E as a part of Board's Exhibit 32-A-B-C-D, and cross-examining the witness Mrs. Reed with reference to said Exhibit 32-E as being a part of said Exhibit 32-A-B-C-D, and as being filed in the Wages and Hours Division on October 31, 1940 as a part of said Exhibit 32-A-B-C-D in the files of the Wages and Hours Division, when as a matter of fact said Exhibit 32-E had not been prepared on said date and was not filed in said Wages and Hours Division on October 31, 1940 and was never a part of said Exhibit 32-A-B-C-D in the Wages and Hours Division, but on the contrary the data in said Exhibit 32-E was assembled and related to a much later date and was not filed in the Wages and Hours Division until after December 29, 1940, and was never filed therein as a part of said Exhibit 32-A-B-C-D; and petitioner assigns as error the attempt of counsel for the Board by the use of said official document Exhibit 32-A-B-C-D having the apparent authenticity of a document signed by the petitioner's Vice President and duly filed in the Wages and Hours Division and bearing its date-stamp as having been received therein on October 31, 1940, and by attaching said Exhibit 32-E thereto as a part thereof, to mislead, confuse and entrap the witness Mrs. Reed and thereby obtain testimony that the matter set forth in said Exhibit 32-E existed on and before said date of October 31, 1940; and assigns as error the examination by the Trial Examiner of said witness Mrs. Reed with reference thereto and the Trial Examiner's action in permitting counsel for the

[fol. 208] "Trial Examiner Batten: I would suggest, Mrs. Reed, if you understood the question, that you answer the questions, and then I think we will get along."

"A. Well, I will make a note of something then, when I get back."

Trial Examiner Batten: I think when Miss Weyand gets through, if your counsel wants to clarify these points, he can ask you questions regarding them.

"I told you yesterday, when you get through with your testimony, if you want to make a statement you may do so, the witness may do so."

"Mr. Hockett: Well, it is just a matter of her making a note now."

"Mr. Reed: I submit if the witness wants, at this time, to make a statement to clarify any answer she has made, she has a right to do it."

"Trial Examiner Batten: There is a question pending and I would like to clear that up first."

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) contained in the following excerpts from the transcript of the record, pages 3476 and 3485 (R. VII. 2240, 2245), to wit:

"Q. What was Ted Scoles's position in January of 1935?

"Mr. Reed: That has been gone into, if Your Honor please, these identical questions."

"Trial Examiner Batten: I am sure I couldn't say, Senator. Will you answer the question, Mrs. Reed?"

"Q. Prior to 1942, what difference was there between Jack McConaughy's duties and his present duties?"

"A. Well, for—

"Mr. Reed: (Interrupting) I submit that question has been answered and the details given in each instance. It

"Mr. Hogsett: (Interrupting) It seems to me that is carrying this question of authority to an absurdity. Now, a truck driver might be driving a truck and another assistant on the truck might say, 'You have got a flat tire, you'd better stop.' Would anybody say the assistant had authority to speak for the company, because he ordered the truck to stop? In other words, we reach a point beyond all reason.

"Trial Examiner Batten: Of course, I think the important point is the statement which Miss Weyand made yesterday, I believe, along with other matters, what was actually done in this plant.

"Mr. Hogsett: I agree.

"Trial Examiner Batten: Now, it seems to me the way to show what was done would be in the daily and ordinary operation of this plant. Now, you might call a person a foreman, when he is not a foreman, and you might call him a superintendent when he is not a superintendent; I think that is as far as I am concerned, and I think as far as the Board is concerned, with what actually took place in this plant at these various times.

"Now, it seems to me some of these questions Miss Weyand has asked are hypothetical, and it seems there is no showing here that many of these things, which have been asked Mrs. Reed and answered, have ever occurred.

"Mr. Hogsett: That is exactly the point.

"Trial Examiner Batten: But I will say again, I am not going to attempt to tell any of the attorneys how to ask their questions. Thus far, with Mrs. Reed, I feel I have been very lenient with all of counsel, and I intend to pursue that policy until we are through with this witness, because she is the president of the company, and unfortunately was unable to testify in the prior hearing.

"Now, on that basis, Miss Weyand, you may proceed. Now, what was the question?

"A. Mr. Batten, may I try to throw a little light on this thing we are doing?



"Miss Weyand: No, the question was—  
 "A. (Interrupting) Well, I don't know what you mean.  
 "Q. (By Miss Weyand) Even if that did not occur,  
 would the operator be free to—

"Trial Examiner Batten: Miss Weyand, I don't understand it then, myself. I am afraid I'd better quit.

"Mr. Horsett: May I make a general observation?  
 We have sat here for hours, listening to hypothetical questions that are not predicated on any facts. In other words, Miss Weyand is working out questions with geometrical precision, and has spun out of that geometrical precision a psychological vacuum, and has predicated her questions on that theory of hypothetical assumptions; and I submit it doesn't get us any place. That technicality of interrogation, in character, is objectionable, and not founded upon anything that is known to exist, I submit.

"Trial Examiner Batten: Well, I don't believe I will sustain your objection. As I previously stated, Mrs. Reed is the president of the company, and thus far I have permitted, I think, somewhat more latitude with Mrs. Reed than I perhaps would have with other witnesses, in view of the fact she is the president of the company. I will permit Miss Weyand to proceed but I want to be sure that the witness understands the question.

"So, Miss Weyand, will you proceed, please?"

198

[fol. 207] Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same), appearing in the record at pages 3454, 3455 and 3456 (R. VII. 2228, 2229), as shown by the following excerpts therefrom, to wit:

"Q. (By Miss Weyand) So Mrs. Tyhurst has the authority to speak for the company in saying the notch should be put in?  
 "A. When you talk about authority—

196

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in striking the testimony of the witness, Mrs. Reed, as set forth in the following excerpts from the transcript of the record, page 3212 (R. VII. 2089, 2090), to-wit:

"Q. (By Mr. Ingraham) You are referring to circulars he distributed to your customers?  
 "A. He had a circular made of the letter, copy of the letter he sent to me, he had that made and distributed to my employees, shortly after the letter came to me; I don't remember what date. I also know that he tried to put it in the newspaper and they wouldn't put it in.

"Mr. Langdale: I ask that that be stricken out as hearsay.

"Trial Examiner Batten: It may be stricken."

197

[fol. 306]

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the record, pages 3444, 3445 (R. VII. 2221, 2222), to-wit:

"Q. (By Miss Weyand) Then your answer would be she would decide for herself whether she wanted to follow the method given her by Mrs. Tyhurst, or given to her by someone else, or some other method that she wanted to follow, without regard to the fact that she had other instructions?

"A. I don't know what you are getting at.

"Trial Examiner Batten: I think what you are trying to get at, when that situation existed in the plant that you just described, that is, Mr. Baty was responsible for the entire production, the sewing section, and the instructions suggested one method and Mrs. Tyhurst should come through the section and suggest another, the operator then decided for herself which method she would use, is that correct?

and, also, renew our motion to dismiss each and all of the paragraphs in the complaint, which is Board's Exhibit No. 1-GGGG.

.....

"Mr. Tyler: Intervener renews its motion to dismiss as heretofore filed."

[fol. 204] 194.

Petitioner assigns as error the action of the trial examiner and of counsel for the Board and I. L. G. W. U. with respect to the introduction of an examination of Mrs. Reed with reference to Board's Exhibit 32-A-B-C-D-E and Board's Exhibits 33 and 34 and 35, and the action of the Board in adopting and affirming all the rulings and findings of the trial examiner based thereon, as constituting prejudicial error against petitioner and as showing the bias and prejudice of the Board and its counsel and of the trial examiner against petitioner, said matters appearing in the record at pages 3256-35, 3250-86, 3748-3750, 3847-59, 3873-81, 3910-26, 3932-40, 3947-52, (R. VII, 2269-2275, 2283-2307, 2400-2402, 2441-2449, 2454-2460, 2477-2484, 2491-2497, and 2497-2501, all inclusive).

[fol. 205] 195.

Petitioner assigns as error each and all the rulings and action of the trial examiner James C. Batten made or taken during the second or further hearing of this matter over the objections or exceptions of petitioner or which are adverse to petitioner (as to which adverse rulings petitioner was allowed an automatic exception) and the Board's action in affirming said rulings and actions of the trial examiner, for each and all the reasons and grounds stated in the record and for the further reason that the bias and prejudice of the trial examiner toward petitioner and its evidence permeated said rulings and because by virtue of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the trial examiner has based his findings, conclusions and recommendations and by virtue of all of which petitioner has been denied a fair trial.

"Mr. Tyler: I object that she is not in a position to testify to what the duties were of the instructors at the Donnelly Garment Company plant.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: She may answer. Objection overruled."

[fol. 203]

192.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling objection of intervenor to question asked the witness Mrs. Pike and permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Page 3084 (R. III. 734g) to-wit:

"Q. (By Mr. Langsdale) Was there any change, as far as you observed, in the authority of the instructors from the time you went to work there in 1933 until you left on March 8, 1937?

"A. No, sir.

"Mr. Tyler: I object that this witness cannot tell by observation whether there was any change in the authority of the instructors.

"Trial Examiner Batten: I presume she is answering [us] to what she knows."

193.

Petitioner assigns as error the action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's motion to dismiss the entire complaint and also its motion to dismiss each and all of the paragraphs of the complaint which motions were renewed at the close of the case, and also assigns to the action of the trial examiner in failing and refusing to sustain intervenor's motion to dismiss the complaint which motion was renewed at the close of the case, which motions appear in the transcript of the record, at Pages 3102, 3103 (R. III. 734n), as follows, to-wit:

"Mr. Stottler: Mr. Examiner, we desire to renew our motion to dismiss, which I think was marked Board's exhibit No. 1-FFFF, and related to the whole complaint;

In connection with this assignment of error, petitioner calls attention to the following excerpts from the transcript of the record and assigns as error each and all of said rulings and comments of the Trial Examiner, to-wit:

[fol. 229] "Trial Examiner Batten: I say to you, is this an introductory question opening up the question of violence through this witness?"

"Mr. Ingraham. We made an offer of proof by the employees on the facts involved in the so-called strikes at 26th and Grand, and I was briefly going to inquire of Miss Tobin who had charge of the strikes up there and if it was the I. L. G. W. U. and what went on." (pp. 4051-52) (R. VIII. 2541)

"Mr. Ingraham. I think that we have a right to show by this witness what the facts were up there, so that—

"Trial Examiner Batten. As to violence, yes.

"Mr. Ingraham.—so that there will not be any question but what this violence did occur.

"Trial Examiner Batten. Then, I will say I am going to rule that it is immaterial to this extent: I am now going to direct the order of proof to this extent, I am going to direct that we first receive the testimony of the 1,200 witnesses, if they testify to material evidence that was ordered by the court, in accordance with the order of the court remanding the case.

"I am going to direct that order of proof at this time. . . . Now, I am going to spend the rest of the afternoon listening to any argument which counsel have on my ruling that we will proceed with the 1,200 witnesses, as the court stated that testimony should be received. . . . (p. 4052-53) (R. VIII. 2541-42)

"Mr. Ingraham. Before Miss Tobin is excused, and before making any offer of proof, I have just one other question.

"Trial Examiner Batten. Well, she has not answered the last one, has she?



"Q. (By Mr. Langsdale) While you were reading articles in the newspapers about the I. A. G. W. U., let me ask you if you read this article in the magazine 'Life,' August 1st, 1938."

"Mr. Ingraham: Yes. We object to this kind of an inquiry. This purports to be an article concerning the recreational activities of the I. A. G. W. U. I don't know what the purpose of it would be in this hearing."

"Trial Examiner Batten: Well, I don't either. I think the question to Mrs. Reed is, did she read this article or see it. Now, I will permit her to answer that question."

219

[Vol. 328]

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action by affirming same) in directing the order of proof herein by requiring petitioner to proceed first with employee witnesses and by confining their testimony strictly to the offers of proof by "the 1200 employees," and in refusing to receive testimony under other offers of proof made by petitioner, and in denying to petitioner the right to put on its proof in the order it desires (when there was no reason such as the convenience of a witness involved which might call for the Trial Examiner's discretion in receiving particular evidence first), and in refusing to permit witnesses, while on the stand, to testify to matters which the Trial Examiner did not consider came within his strict construction of said "employee" offers of proof, and in refusing to receive pertinent and material testimony from said witnesses and other witnesses for petitioner bearing on the question "how and why" the DGWU was formed and on whether there was any coercion, interference or support on the part of petitioner in connection with the formation of said union.

These rulings and action and petitioner's objections and exceptions thereto made at the time appear in the transcript of the record at pages 4049 to 4066 inclusive (R. VIII 3240-3264, incl.).

[fol. 227] "Q. (By Mr. Langsdale) Did you make any order at all with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives?

"Mr. Reed: I object to that as immaterial. The evidence so far, if it shows anything about this, is that this information, if it ever was received, came during the trial of these cases. If so, it is long subsequent to the charge that is filed here. If after this case was started or after this case was tried or while it was being tried the witness heard something in the trial, it is immaterial whether she went to investigate to find out whether it was going on or not.

"Mr. Langsdale: I am past that. I am asking her now if she made any order with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives.

"Mr. Reed: If it was an order, it was the same thing.

"Trial Examiner Batten: At what time?

"Mr. Langsdale: At any time after she learned it was charged that they were using the i. d. m. system to pass information among the employees connected with that union.

"Q. (By Trial Examiner Batten) Mrs. Reed, you have stated you did not make any investigation of it. Did you take any action with respect to it?

"A. I never made an order—

"Mr. Reed: I make the same objection to the Examiner's question that I made to Mr. Langsdale's.

"Trial Examiner Batten: I will overrule the objection.

"Q. (By Trial Examiner Batten) Did you take any action on that?"

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record (pp. 3983-84), to-wit:

women who was on the job, but he could tell us how much work we had of a certain type that this woman could do. We didn't lay off any double-stitchers if we had—

"Q. Mrs. Reed, I think you have explained that several times.

"A. But it comes back all of the time. Mr. Batten, and it would seem that Dewey had control of managing the plant.

"Q. No, we are not interested in managing the plant. We are interested in what these people did.

"A. I am trying to explain it to you.

"Q. Well, Mrs. Reed, you have already explained it several times. In fact, I think it was explained to Mr. Ingraham on direct examination and to Miss Weyand on cross-examination.

"A. Well, Mr. Langsdale seems to want to know about it again.

"Mr. Langsdale: I just don't want you to be confused about it, Mrs. Reed.

"The Witness: I am not confused about Dewey. You are the one that is confused about Dewey.

"Q. (By Mr. Langsdale) Didn't Mrs. Reeves testify: 'Nobody is let out of the Donnelly Garment Company unless four people pass on it.' Would you say that is true?

"A. That was my general knowledge.

"Q. Would you say this is true:

"Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and he knows the reasons about what happened each week because he analyzes each week our pay roll cards with the instructor and Mrs. Wheery."

"A. That wasn't my testimony, was it, Mr. Langsdale? "Q. I asked you if that was true. That was Mrs. Reeves's testimony."

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record (pp. 3968-69), to-wit:

Petitioner assigns as error the action of the Trial Examiner (and the Board's action in affirming same) in repeatedly interposing in the examining of witnesses, an illustration of which appears in the excerpts from the transcript of the record hereinafter quoted from pages 3888-3889, and petitioner further assigns as error the said testimony so elicited by the Trial Examiner for the reason that same relates to a period prior to the passage of the National Labor Relations Act, and for further reason that said evidence contributed to the erroneous findings and conclusions of the Trial Examiner. As a part of this assignment of error petitioner calls attention to the following excerpts from the testimony (pp. 3888-3890), (R. VII. 2464, 2465), to-wit:

"Q. (By Trial Examiner Batten) Well, I thought this morning, in that old N. R. A. record—wasn't he one of the four that were mentioned as passing upon the people?

"A. I am saying they would get his opinion and—The reason they would get his opinion, Mr. Batten, was to see how much—if we had a lot of double-stitching to do, he would be the one to know it and—

"Q. Irrespective of what they got this opinion on, he was one of the four, was he not, Mrs. Reed?

"A. But his opinion was always on the work.

"Q. Whatever his opinion was on, he was one of the four mentioned by Mrs. Reeves, wasn't he, when she said they always got the opinion of these four people before they did anything?

"A. That is right. But I am trying to say, Mr. Batten, the reason his opinion would be worth something was because of his knowledge of how much of a specific kind of work we had to get through and how many machines we had to do it with, and from that point of view.

"Q. Well, of course, I didn't ask you why he is there.

"A. I think you ought to let me explain.

"Q. Mrs. Reed, I have no objection to your explaining. My only question to you was, was he one of the four mentioned this morning?

[Vol. 226] "A. But it seems to me you ought to let me explain. It wasn't that he had personal control over the

"A. (Continuing)—and take two or three hours to do it, and—

"Trial Examiner Batten: Mrs. Reed, the question is, would you have approved this young lady's—I have forgotten her name—pending a day getting a petition signed in the plant?"

215

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record (pp. 3863-64) (R. VI. 2450-51), to wit:

"Q. (By Mr. Langsdale) I asked you if you have any information that Lena Tyhurst was not in the position that she is described as here in the handwriting of Lee Baty on June 1, 1937?

"A. Mr. Langsdale, I have said over and over and over again that while Mrs. Reeves and Mr. Baty were managing the factory I had no knowledge of my own of the details of how they did it and what they called the people who are in the plant.

"Trial Examiner Batten: Read the question, please.

"(Throughout the last question was read by the reporter.)

"Mr. Reed: That is calling for hearsay evidence. Whether you have heard something about it, that doesn't make evidence.

"Trial Examiner Batten: Do you understand the question, Mrs. Reed?

"The Witness: I have said over and over and over again—

"Trial Examiner Batten: Just a moment, Mrs. Reed. Do you understand the question?

"The Witness: Will you read the question again?

"Trial Examiner Batten: The question is this: Do you have any information that Lena Tyhurst was not assistant factory manager on this date as described on this document by Mr. Baty?"



"Mr. Langsdale: You said that before

"A. I know we had week workers that would go out and have their hair done and—

may proceed.

"Trial Examiner Batten: Objection overruled. You

room? I object to the question.

"Mr. Reed. How can she talk on an assumption [fol. 224] made for the first time by Mr. Langsdale in this court-

you have approved of that?

"Q. (By Mr. Langsdale) On that assumption, would

taken a day to get 1,000 names signed.

"Mr. Langsdale: I am going to assume it would have

"Mr. Reed: There is no evidence that she took a day.

a day getting a petition signed.

approved of Mrs. Shartzer's going around and spending

"Trial Examiner Batten: Whether she would have

"Mr. Reed: Approved something that never took place?

would have approved.

"Trial Examiner Batten: She may tell us whether she

theoretical question.

"Mr. Reed: We object to that. That is purely a hypo-

and getting these petitions signed and taking a whole day?

"Q. Would you have approved of her going around

to wit:

the transcript of the record, pages 3825-26 (R. VII. 2437), affirming same) set forth in the following excerpts from the transcript of the record, pages 3825-26 (R. VII. 2437),

214

"Trial Examiner Batten: You may proceed."

"Mr. Reed: I just think it is encumbering the record.

1935 situation.

"Trial Examiner Batten: That is with respect to the

"Mr. Reed: All right.

"Mr. Reed: I insist, if your Honor please, this witness ought to be asked direct questions, and not have things read."

"Trial Examiner Batten: The question is not whether Mrs. Reeves' testimony is true, but was that the true situation in the plant at the time, if this witness knows."

"Mr. Reed: I object to that method of examination."

"Trial Examiner Batten: I will overrule the objection."

"Mr. Reed: As incompetent, and immaterial."

"Trial Examiner Batten: Do you know if that was the method?"

213

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) throughout the hearing in permitting testimony and evidence to be introduced concerning matters which occurred prior to the passage of the National Labor Relations Act for the reason that said evidence is immaterial, irrelevant and incompetent, and for the further reason that same has contributed to the erroneous findings and conclusions of the Trial Examiner, and in connection with this assignment of error petitioner calls attention to the testimony at pages 3760-3784 (R. VII. 2407-2417, incl.) and to the ruling of the Trial Examiner concerning same as shown in the following excerpt from pages 3775-76 (R. VII. 2412), to wit:

[fol. 223] "Q. And Mrs. Reeves was your production manager at that time, was she not?"

"A. Yes."

"Q. And reading further from the same testimony—"

"Mr. Reed: (interrupting) Just for the record, we object to the testimony with reference to what happened in 1935 and prior thereto, as entirely remote. It does not throw any light, it does not furnish a background for this case."

"Trial Examiner Batten: Well, you may have a continuing objection to each question."

Wheery, was that true?

"Q. (By Mr. Lanksdale) Then, that group of people are taken up with Mr. Atchison, and Mr. Atchison discussed with them very thoroughly, he sees what they have made and he knows the reason that happened, he has listed each week on pay roll cards with the instructor, and Mrs.

"Mr. Lanksdale: I would like to ask one more question.

2411) to wit:  
from the transcript of the record (p. 3765), (R. VII. 2410, affirming same) as set forth from the following excerpts of the Trial Examiner (and the Board's action, in Petitioner assigns as error the rulings, action and com-

[Vol. 222]

212.

know whether you received a written notice, Mrs. Reed?"  
"Trial Examiner Batten: You may tell us. Do you

discharge these two girls?"

company a written notice that it desired the company to  
"Did the Donnelly Garment Workers' Union give the

as follows:

"(Thereupon the last question was read by the reporter

"Trial Examiner Batten: Read the question please.

these two girls. There is no connection between them.  
Jack McCannaghey and somebody else who resigned from  
"Mr. Reed: If the company went into the question of

later, that happened in 1939, 1940, and 1941.

tion of various persons, Jack McCannaghey and Iyle  
"Miss Weyand: The company did go into the resigna-

not these girls were properly discharged.  
It raises the question, if it raises anything, whether or  
"Mr. Reed: This is something we didn't go into at all.

work out some sort of a limitation on this thing.  
Reed is through, I am more than convinced we have to  
to attempt to limit the matter at this time. When Mrs.  
Mrs. Reed. I do not intend, Senator, as I previously stated,

action and comments set forth in the following excerpts from the transcript of the record (pp. 3635-36 and pp. 3703-04), R. VII. 2371, 2375-6), to wit:

"Trial Examiner Batten: The question was, Mrs. Reed, did you make any investigation of it yourself after Mr. Baty reported the incident to you?

"A. After the incident was reported to me I made no further investigation.

"Q. (By Miss Weyand) Did you give any directions that the girls should be contacted and assured protection to remain in the plant and work?

"A. Mr. Baty was in charge of the plant, and I didn't feel that it was necessary for me to go into that incident at all.

"Trial Examiner Batten: The question is, Mrs. Reed, did you? Did you do anything about it?

"The Witness: But I say I didn't feel any reason for it.

"Trial Examiner Batten: Let's assume that you felt that way, did you do anything about it?

The Witness: I did not."

211.

[fol. 221]

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as shown from the following excerpts from the transcript of the record (pp. 3743-44), (R. VII. 2398, 2399), to wit:

"Q. (By Miss Weyand) Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?

"A. That is my remembrance.

"Mr. Reed: Wait a minute. We object to that. That is opening up exactly the question the Commissioner has ruled out.

"Trial Examiner Batten: I didn't rule it out, Senator.

"Mr. Reed: If you didn't rule it out—

"Trial Examiner Batten: I have been trying to arrive at some sort of a limitation. I said we will proceed with

"At the time I wasn't thinking how they were dressed, so I don't remember whether they were wearing uniforms or not.

"Q. I would suggest that you give some thought to these questions, because after all that is the reason you are here, to answer these questions.

"A. I have been on the stand about five hours, and I am tired.

"Q. Irrespective of that, I would suggest that you give thought to these questions, and take your time.

"A. All right. Thank you.

"Q. And don't proceed to make an answer, and then make the statement later that you don't remember. I would think about the question first.

"A. Well, thank you very much.

209

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) appearing at pages 3630-31 of the transcript of the record (R. VII. 2368), as follows, to-wit:

[Vol. 230] "Q. (By Miss Weyand) Is the door to your office one that leads into an outer reception office, or is it directly connected with the main part of the building?

"Mr. Reed: Now, Mr. Examiner, I have to object. This is a mere consumption of time. What difference does it make where her office door leads, or how many minutes it is open during a period six or seven years? I can't see the reason for questions of this character.

"Trial Examiner Batten: Well, Senator, as I have indicated before, I am not going to attempt to limit the examination at this point in any way. Whether it is material or not, I presume will appear. I don't suppose I can ask any of counsel on preliminary or introductory question just the purpose.

"I will permit you to proceed, Miss Weyand."

210

Petitioner assigns as error the repeated interposition of the Trial Examiner (and the Board's action in affirming same) in the examination of witnesses and his rulings,



207.

Petitioner assigns as error the refusal of the Trial Examiner (and the Board's action in affirming same) to exclude testimony as to whether petitioner ever issued instructions to the instructors directing them to maintain a neutral attitude in labor matters, and the Trial Examiner's interposing and asking questions to elicit said testimony over the objection of the petitioner as same appears at page 3678 of the transcript of the record (R. VII. 2363), for the reason that said testimony is incompetent, irrelevant and immaterial to any issue in this case and said action of the Trial Examiner shows his prejudice against petitioner and his prejudgment of the charges against petitioner, and because said incompetent, irrelevant and immaterial evidence contributed to the erroneous findings and conclusions of the Trial Examiner herein.

208.

Petitioner assigns as error the comments of the Trial Examiner (and the Board's action in affirming same) set forth on pages 3680, 3681 of the transcript of the record (R. VII. 2364, 2365), which shows the prejudice of the Trial Examiner against petitioner and its witnesses. The following are excerpts from said comments:

"Q. Were the employees present there at the meeting wearing uniforms?"

"A. A number of them were. I don't remember specifically how they were dressed. My plant employees do wear white uniforms."

"Q. (By Trial Examiner Batten:) You thought some of them were wearing uniforms?"

"A. If this hadn't come to my attention, I don't think I would have thought about it. I didn't think about it."

"Q. Is that your recollection?"

"A. I don't remember."

"Q. Then, Mrs. Reed, when you are asked these questions and you don't remember, say you don't remember."

"A. The first thing I was thinking of, naturally, Mr. Batten, my plant employees do wear white uniforms, and it being time to go home in the evening, some of them may have changed or they may not."

Petitioner further assigns as error said ruling (and the Board's action in affirming same) for the reason that the failure of the Trial Examiner to exclude said immaterial and irrelevant evidence encumbers the record therewith and obscures the real issues involved and has contributed to the erroneous findings of the Trial Examiner against petitioner.

time, Miss Weyand."

great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand."

going to pursue the same policy I have consistently followed, unless I feel that it is entirely beyond any matter which we covered in the original hearing, and there was a great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand."

thing to do, but there must be a limit. . . .

the reason, I think, that was commendable and a proper examination in chief and in cross of this witness, for is commendable—I know that you have been liberal in "I know that Your Honor, and I think I might say that it

listening to such examination.

and every individual in this room, to no purpose at all, We are all sitting here, wasting the time of the government, union. It has not even a faint tendency to prove that the Donnelly Garment Company dominated a garment having the remotest infinitesimal value, whether proving line of questioning as being wholly immaterial, and not "Mr. Hogsett: If the Examiner please, I object to this

"A. Not to my knowledge.

plant?

"Q. Was such a pin sold to employees around the

brought to my particular attention.

Loyalty on it, but I don't remember that it was ever heard discussions of a Loyalty pin, or a pin with the name "A. I don't call to mind in a definite way a pin. I have

from to wit:

(R. VII. 2351, 2352), and to the following excerpts there- affirming same) appearing at pages 3656 to 3658 inclusive ments of the trial examiner (and the Board's action in Petitioner assigns as error the rulings, action and com-

"Trial Examiner Batten: Therefore, you must assume the responsibility of entering into the stipulation.

"The Witness: We didn't know the Board would do a thing like that until this morning.

"Trial Examiner Batten: If you find it is incorrect, check it up and—The burden is on you. (p. 3635) (R. VII. 2338). . . .

"Trial Examiner Batten: Miss Weyand, I said we will proceed on the assumption that it is correct. It is in the record, and it was stipulated, and unless some action is taken by one of the parties to make a motion or take some step to correct it, we will proceed on the assumption that the record is correct. (p. 3688) (R. VII. 2366). . . .

"Trial Examiner Batten: I am not going to initiate any action to change the record. The record stands. It has gone through the hearing, it has gone through the Board, and it has gone through the Court, and as far as I am concerned, I will accept the record as it is." (p. 3689) (R. VII. 2367).

205.

[Vol. 217]

Petitioner assigns as error the ruling and action of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record, page 3662 (R. VII. 2349), for the reason, among others, that same shows the purpose of the Trial Examiner to have elicited immaterial, irrelevant and incompetent evidence and then to base findings against petitioner thereon:

"Q. Did you ever hear of a Twilight Club, prior to reading that today?  
"A. I did not.

"Mr. Hossett: What possible difference would it make if she did or did not? I object; it is immaterial.

"Trial Examiner Batten: I overrule the objection; the answer is necessary."

"Trial Examiner Batten: (Interrupting) Just a moment, Mrs. Cooper, I don't believe at this point of the proceeding I would exclude hearsay, hardly."

"Mr. Reed: Well, we object to it."

"Trial Examiner Batten: I'll overrule the objection."

224

[fol. 239]

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) appearing on pages 4256-57 as shown by the following excerpts therefrom, to wit:

"Q. (By Mr. Langsdale) Would it have made any difference in your mental attitude toward the ILGWU had you believed Mr. Reed was telling the truth when he said that Mr. Dubinsky was a Communist and a Bolshevik?"

"Mr. Reed: That is a purely hypothetical question, and the hypothesis is a mere assumption. Would it make any difference to you if something else had happened?"

"Trial Examiner Batten: Do you understand the question, Mrs. Cooper?"

"A. I think he wants to know if I had heard that he was a Communist, if it made any difference in my opinion of the union."

"Mr. Langsdale: Yes."

"Trial Examiner Batten: Well, the question is, if you had believed Senator Reed's statement, would it make any difference?"

"A. I was going mostly by their actions here in the city."

"Q. (By Mr. Langsdale) Now, Mrs. Cooper, that isn't the question."

"Mr. Langsdale: Will you read the question?"

"Trial Examiner Batten: Will you please read the question?"

are not restricted to offers of proof on cross-examination. I think, generally speaking, you are, assuming—

“Miss Weyand: I do not mean—

“Trial Examiner Batten: Just a moment—assuming I am able to confine the direct examination to the offers of proof, which I will attempt to do.

“Now, as to your second point, I don't know your purpose, but I think I permitted some questions of this witness as to supervisory employees, instructors, and so forth, and following that examination on direct, I think you are within the direct examination, so you may proceed.

“Mr. Ingraham: Well, we object to this line of questioning as outside the scope of the ruling of the court.

“Trial Examiner Batten: I will overrule the objection.”

223.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing on pages 422-28 of the transcript of the record as shown by the following excerpts therefrom, to wit:

“Q. Did you ever hear that either Sylvia Hall or Fern Sigler left their work as a result of certain demonstrations?

“A. I heard something about it.

“Q. What did you hear?

“Mr. Ingraham: Would you read the question, please?

“Miss Weyand: Will you read the last question, please.

“Trial Examiner Batten: Will you please read the last question?

(Last question was read by the reporter.)

“Mr. Reed: The answer was what?

(Last answer was read by the reporter.)

“Mr. Reed: We object to that as calling for pure hearsay evidence.



associates, will you now give us a secret election? And I challenge the Board to that.

"Miss Weyand: I would like to state the Board's position with reference to a secret election for the record.

"The Board's position has consistently been, and was upheld by the Courts in this regard, that a secret election cannot be fairly conducted if an employer's unfair labor practices have not been corrected or dissipated.

"Mr. Reed: Well, you assume there are unfair labor practices, therefore you assume you can't have an election; therefore you get an election if the Board wants it and not as a matter of right, and the Board's position is, 'We have prejudged you, you are guilty of unfair labor practices, and therefore we won't give you a chance to have an election or give the employees a chance to have an election to determine what their wishes are.'

"That is the fine logic we have in this case, and it runs throughout it."

253

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the transcript of the record at pages 4136-37 (and the Board's action in affirming same) as shown from the following excerpts therefrom, to wit:

"Q. Were you given any instructions, oral or written, or any rules of conduct, which stated what your duties as an operator were between January 1936 and July 1937?

"Mr. Ingraham: I would like to ask Miss Weyand under what officers of proof this line of questioning comes.

"Miss Weyand: I do not believe that on cross-examination I am restricted to any officers of proof. I think as I develop my questioning the point at which I am aiming will be clear. I think it is proper cross, under the questions that were allowed over my objections to be put to this witness, and, therefore, even though I objected to the questions as to what the instructors' duties were, I can certainly cross-examine as to that matter.

[Vol. 238] "Trial Examiner Batten: Of course, Miss Weyand, I don't believe I could agree with you that you

4056-4060) (R. VIII. 2544-47) to permit the witness Wave Tobin to answer the question asked by petitioner at page 4054 of the record (R. VIII. 2543), to wit:

"Q. (By Mr. Ingraham) Miss Tobin, who is the chairlady of the Marguerite Keyes shop at the present time?"

and assigns as error the ruling of the Trial Examiner in refusing to permit petitioner to recall said witness Wave Tobin to the stand for such purpose or for any purpose as shown by the Record at pages 4088-92 (R. VIII. 2560-1-2); and in refusing to permit petitioner to examine the witness Wave Tobin with reference to the matters set forth in section B of petitioner's answer, and with reference to the matters contained in or referred to in petitioner's offer of proof (Board's exhibit I-22222) as shown by the Record at pages 4090-4092 (R. VIII. 2561-62); and petitioner assigns as error the action of the Board in adopting and affirming all the foregoing rulings and actions.

In connection with this assignment of error petitioner calls attention to and makes a part hereof all the quotations from the Record set forth in petitioner's preceding assignment No. 219.

This assignment of error is made and based upon all the reasons and grounds set forth or referred to in said foregoing assignment No. 219, and upon the further ground that said ruling and action have denied to petitioner a fair trial herein and deprived it of due process of law under the Fifth Amendment of the Constitution of the United States.

221

Petitioner assigns as error the refusal of the Trial Examiner and the Board to grant a secret election among the employees to determine their choice of a bargaining agency as set forth in the transcript of the record at pages 4157-58 (R. VIII. 2591, 2592), as will appear from the following excerpts therefrom, to wit:

[fol. 237] "Mr. Reed: I just want to ask—I tried to ask it before Mr. Tyler reached the floor—now, if you will give us a secret election, since you say these people are afraid to testify in the presence of their employers or their

[fol. 236] examiner (as shown by the Record at pages 4051-52 and 4052-4060 of the Record (R. VIII. 2541-2542, 2544-2547, incl.), and petitioner further assigns as error the refusal of the trial counsel for petitioner at pages 4051-52 and 4052-4060 of the Record (R. VIII. 2541-2542, 2544-2547, incl.), and offer of proof as to what petitioner would prove by said Trial Examiner's requirement that petitioner submit an other pertinent matters herein, and assigns as error the testimony from said witness concerning said matters and in refusing to permit petitioner to proceed to elicit

ment Company plants?" "Q. Now, Miss Tobin, there has been reference in this case to strikes at 26th and Grand, in the spring of 1937. Were you in charge of the strikers in the Missouri Gar-

(R. VIII. 2540) as follows:

appearing at the bottom of page 4048 and top of page 4049 Examiner to permit said witness to answer the question the order desired by petitioner and the refusal of the Trial petitioner to proceed with the offering of its evidence in the witness then on the stand, and his refusal to permit tioner to continue with the examination of Wave Tobin, refusal of the Trial Examiner to permit counsel for petitioner to continue with the examination of Wave Tobin, sel for the Board and IIGWU therein appearing and the 2555 incl.), and the statements and comments of the counsel of the Record at pp. 4049-4073 inclusive (R. VIII. 2540-2541, and the statements and comments of the Trial Examiner appearing in the Transcript

States. Fifth Amendment to the Constitution of the United property without due process of law in contravention of deprived petitioner of a fair trial and of its liberty and aminer with reference thereto are contrary to law, and tute an abuse of any discretion vested in the Trial Ex- tary and unnecessary to orderly procedure and consti- the further reasons that said rulings were and are arbi- of the record (R. VIII. 2540-2541 and 2639-2641) and for reasons and grounds given at pages 4049-4096 and 4315-16 [fol. 235] This assignment of error is made for all the

"Mr. Reed: I want to call attention to this situation which has arisen:

"We are contending that Wave Tobin continue on the witness stand and that her testimony should be heard before other testimony is called for. That is the situation.

"Now, the Examiner rules that he will not rule at this time and directs us to go forward with other witnesses; he is going to reserve his decision. If the decision is not made at this time, then the effect of it will be that we will go on and hear these other witnesses and we don't have a ruling. I think we are entitled to a ruling now, so that we will know how to proceed.

"Trial Examiner Batten. Senator, I ruled this morning that I was first going to hear the 1,200 witnesses which the court referred to and which officers of proof I rejected, and I have not changed that ruling.

"Mr. Reed. You have not changed that ruling, but we have now filed a paper here and we ask a ruling on it, and your say you will reserve that ruling. Of course, if you make the ruling after the damage, as we think is done, that will do us no good if you then decide it in our favor.

"Now, I don't think I will be able to change your mind, but I want to make this observation, that in the orderly procedure in courts of justice—and I have been there a good many years—and as said by the Court of Appeals here in its quotation from another eminent authority, it is the right of a litigant, through its counsel, to put its evidence in the order it sees fit, and the only question is whether the evidence is competent. The order of proof rests with the person proffering the proof.

"Now, this proceeding that we are now talking about I have never seen in any court, at any time, where a judge undertook to say in what order you shall put on your testimony.

"We offer it, and if it is incompetent, of course you can rule it out, but you cannot tell us, under any rule of law that I ever heard of, the order in which we shall proceed with our defense in this case." (pp. 4095-96) (R. VIII.

"Mr. Ingraham. I want to call the Examiner's attention to the last paragraph in respondent's last answer. It is Board's Exhibit No. I-L-L-L-L.

"Mr. Langsdale. What exhibit is that?

"Mr. Ingraham. Board's exhibit No. I-L-L-L-L. Page 3441 of the record.

"Respondent further states, 'I am reading from the answer—that during all of the times mentioned in paragraph 11 of the Board's complaint the International Union, its officers, agents and members were engaged in the said and lawful conspiracy against respondent set forth in section (B) of this answer and the matters set forth in said section (B) of this answer are by reference made a part specifically of respondent's answer to paragraph 11 as though set out in haec verba.'

"Now, section (B) of respondent's answer was stricken out. Paragraph 11 of the Board's complaint remained in the complaint, and our answer to it remained in our answer; it wasn't stricken out.

"Now, respondent offered to prove those facts which are in paragraph 11 by the following witnesses: Nell Quinlan Reed, Elizabeth Reeves, R. J. Ingraham, John Bachelor, Marguerite Keyes, Inez Warren, Pauline Shattuck, Mary Spreiter, Nelly Stites, Ruby Rickett, Fyle Jeter, Raymond Smith, Effie Hall, George Cotten, Flora Ruden, W. D. Rosenfield, Gordon I. Gordon, Velma Dowdy, Meyer Perlstein, David Dubinsky, Wave Tobin, Sylvia Hull, and Ellen Fry.

[fol. 34] "That offer was rejected.

"We offered to prove the allegations contained in subdivision B of our answer and those are—I will not take the time to read subdivision B.

"Trial Examiner Batten. You mean subdivision B of your answer?

"Mr. Ingraham. Yes. Now, in order to proceed we feel that Wave Tobin's testimony is essential and that under the offers of proof we have a right at this time to examine her." (pp. 4090-91-92) (R. VIII. 2561, 2562).



"Trial Examiner Batten. I think I stated the last day we met, Senator, that I did not intend to require it, as far as Miss Tobin was concerned.

"We are ready to proceed in accordance with my ruling. We will proceed with the employees, in line with the offers of proof which were made and in line with the circuit court's opinion.

"Mr. Ingraham. Respondent excepts to your ruling. We will have to get the employees up here.

"Mr. Ingraham. I would like to call Wave Tobin to the stand.

"Trial Examiner Batten: I think I ruled on that this morning, Mr. Ingraham," (pp. 4087-88-89) (R. VIII. 2560, 2561).

"[at 233] "Mr. Ingraham. Do I understand the ruling this morning is limiting the testimony to the testimony of Donnelly employees?

"Trial Examiner Batten. I don't think that was the ruling, Mr. Ingraham. You may read the record in the morning. I said I would receive first the testimony of the employees referred to by the circuit court in the offers of proof which I rejected.

"Mr. Ingraham: Now, we have made other offers of proof besides the offers of proof of the employees. There are other offers of proof that were made at the last hearing besides those made on behalf of the employees.

"Trial Examiner Batten. Yes, I think that's right.

"Mr. Ingraham. Now, are we to be limited to the evidence that is covered in the offers of proof of employees?

"Trial Examiner Batten. You are to be limited now to the 1,200 employees referred to by the court—why and how—the offers of proof made on behalf of those 1,200 employees. That is the matter which I will hear first." (pp. 4089-90) (R. VIII. 2561)

[104.232] "Trial Examiner Batten: Well, I don't intend to cover all the matters covered in the prior hearing, Mr. Langsdale. I intend to accept first the testimony of the employees referred to in the Circuit Court's decision in the offer of proof which I rejected. Now, that doesn't mean I am limiting the hearing to that. (p. 4077) (R. VIII. 2555)

"Mr. Reed: I confess I am not sure that I comprehend the ruling. Your Honor states that you will receive testimony of the employees on the matters that were referred to in the offer of proof. Do we understand that is all the testimony you are going to permit?

"Trial Examiner Batten: No, I think I stated that is the testimony which I intend to receive first, Senator. In other words, I believe the Circuit Court, in that one matter at least, was specific, and they said I should receive the testimony of the 1200 employees in accordance with the offer of proof. Now, that much of the decision is definite, and I think in line with the Court's decision, that is the testimony which I should receive first, and accordingly I am directing that order of proof." (p. 4078) (R. VIII. 2555)

"Mr. Reed: We are in the middle of the examination of Wave Tobin. We insist respectfully that we are entitled to proceed with that witness, and I call attention to the Examiner's ruling, which, as I understand it, is that he proposes now to regulate the order of proof, and to direct the Respondent how they shall put in their case. That we think deprives us of our right under the law, and that is bad practice in any event. (pp. 4078-79) (R. VIII. 2555-56).

"Mr. Reed: . . . Now, we insist and we propose, on our part—of course, we cannot do it if the Examiner refuses—to go on with the examination of Miss Tobin, and when we ask questions that are outside the issues of this case, the proper objections can be made, but we are not required to tell counsel what we intend to prove by this witness.

ers, so that they were intimidated into riding there in  
busses or riding there in streetcars, all of that forms a  
part of this picture.

"The only question, then, is, was the violence here?  
Not what reasons they had for it. We do not have to go  
into that. But was the violence here? Was the danger  
here? Was the threat here? Those things we have the  
right to go into.

"Now, here is the lady who conducted the strike. We  
want to ask her a few brief questions about it.

"Now, if Your Honor undertakes to take this case out  
of the hands of the attorneys and tell us how we shall in-  
troduce our evidence and the order of it, all I can say is  
that it we will have to do as we did before, save our excep-  
tions." (p. 4056-57-58-59) (R. VIII. 2544-2546, incl.).

.....

"Mr. Ingraham: Won't you let us finish with the  
question that is asked this witness?" (p. 4060), (R. VIII.  
2547).

.....

"Trial Examiner Batten: I think we are ready to pro-  
ceed. In line with my suggestion when we adjourned I went  
along the matter of the order of proof in the hearing, and  
with respect to the procedure which we will follow.

"First, I am going to receive the testimony of the em-  
ployees referred to in the Circuit Court's decision, and  
on that basis we are ready to proceed.

"Mr. Langsdale: Mr. Examiner, may I ask you what  
you mean by 'in accordance with the Circuit Court's de-  
cision'? In other words, do I understand you to mean that  
you will receive the testimony of the employees that was  
offered?

"Trial Examiner Batten: That's right. In accordance  
with the offer of proof.

"Mr. Langsdale: And that doesn't mean then the same  
employees can go over the same matters that they did go  
over at the hearing?

her interest and to show that by her acts. And if we had no other ground than that, we have the right to ask this question and to have it answered now, and not two weeks from now, or some other time when we may reach it.

"I insist we have the right to ask this lady if she was here when these strikes occurred and to ask her if she did not take part in them, and to ask her if she did not have direction of the violence that took place, and to show her photograph here—her picture in the pictures that display the riotous conduct of these strikers. That for the purpose of showing her interest, if nothing else.

"Then, this evidence is competent for another reason. Of course, it cannot be that in a strike of this kind, violence of this kind, where there were hundreds and perhaps thousands of people concerned—we could not be expected to show by every one of the witnesses that we may put on here that they saw the strike. Some of them saw parts of it. But if we offer the person that was conducting the strike, who knows all about it, and prove the fact that the strike took place and the kind of strike it was, that it was given publicity through the papers and the employees hear of it and know it—the air is full of it, the air is full of danger for them, and that is a reason why they would want to organize a union of their own, to be protected against this violence, that is clearly within the decision of the Circuit Court of Appeals.

[Vol. 231] "Now, here is what they said:—Mr. Hogssett called attention to it very graphically.

"At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show how and why they organized the union."

"One of the ways is that this riotous conduct was going on, these brutal abuses were being visited upon girls going to work, that the threats had been made that the same thing would be done to the Donnelly Garment work-

"Mr. Ingraham. No, I understood you to state that you were going to have us make an offer of proof.

"Trial Examiner Batten. Yes, I want an offer of proof on that, as far as this witness is concerned; not a general offer of proof, Mr. Ingraham.

"Mr. Ingraham. Yes.

"Q. (By Mr. Ingraham) Miss Tobin, who is the chair-lady at the Marguerite Keyes shop at the present time? (p. 4034) (R. VIII. 2542-3).

.....

[fol. 230] "Mr. Ingraham. May the witness answer the question I have just asked, so that we can go ahead and present any argument we have on this legal point?

"Trial Examiner Batten. I prefer that you present your arguments now, Mr. Ingraham. That was my request.

"Mr. Reed. I want to say first, that the order of proof in a case is in the hands of the counsel who proffer the proof. If they do it in an improper way, it is then for a court or an examiner to rule on the evidence as it is offered. But no court has the authority to tell counsel the order in which they shall introduce proof. I don't think I am mistaken about that.

"So, I say we propose to exercise our right to offer our proof in the manner which seems to us is best and proper. If the Examiner sees fit to exclude it, we can only save our exception at that time.

"Now, in regard to this witness, you have stated that you did not propose to make any rule or follow any rule with regard to who brought in a witness—that you might bring in a witness and you might ask them questions like you would on cross-examination—

"Trial Examiner Batten. If they become adverse to you, Senator.

"Mr. Reed. Yes. Now, we have the right to show the interest of this witness. That is what we are trying to show, her employment for a number of years by the prosecuting force in this hearing. We have the right to show



"Mr. Reed: I object to that as incompetent and immaterial and entirely outside the issues in this case.

"Q. (By Trial Examiner Batten) Do you understand it?

"A. I think I do.

"Q. Well, if you do, you may answer it."

225.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown in the following excerpts from the transcript of the record on page 4263, to wit:

[fol. 240] "Q. (By Mr. Langsdale) Did you get from this article any belief that Mr. Dubinsky was a Communist and a Bolshevik?

"Mr. Reed: Well, we object to that as immaterial and incompetent.

"Trial Examiner Batten: You may answer.

"Mr. Reed: I want to get my objection into the record, that is all.

"Trial Examiner Batten: Yes, I will overrule it, Senator."

226.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) throughout the hearing in permitting counsel for the Board and for the I. L. G. W. U. to adduce incompetent, irrelevant and immaterial testimony on the pretext that the same was for the purpose of credibility or that the questions asked were preliminary questions, whereby said improper and incompetent evidence was gotten into the record and contributed to the erroneous findings and conclusions of the Trial Examiner; that such was the purpose of the Board and its counsel is shown by the following excerpts from the transcript of the record at pages 4335, 4336 (R. VIII. 2651), to wit:

"Miss Weyand: I should say that if my cross-examination had brought out a connection of the company with the incident, the Board would be entitled to rely on it in its decision. \* \* \*

"Miss Weyand: My purpose was directed at credibility, but I don't believe that when I direct a question at credibility which is a proper question to direct at credibility I am to be barred from taking the answer and saying I wish to use it for something else if the answer developed into a statement of a connection of the company with the incident."

227.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing in the following excerpts from the transcript of the record at pages 4314 to 4316 inclusive (R. VIII. 2639-2640), to wit:

[fol. 241] "Q: Do you recall at that time what the International was—what charges they were making about the working conditions at the Donnelly plant?

"A. I think I do.

"Trial Examiner Batten: Mr. Ingraham, is that in the offer of proof, the N. R. A. hearing?

"Mr. Ingraham: No. But the Examiner and the Labor Board laid great stress on the events that occurred prior to the effective date—

"Trial Examiner Batten: I do not intend to go into that on these offers of proof.

"Mr. Ingraham: Well, I will have to except to Your Honor's ruling.

"Trial Examiner Batten: You may do so.

"Mr. Ingraham: That is all.

"Trial Examiner Batten: I think I stated pretty clearly, Mr. Ingraham, on these employees, I want to confine it first to these offers of proof. That is the thing that the circuit court clearly indicated I should have taken. Now, I am not making a ruling, as I said before, at this time that I will not take anything else, but I am going to take first the things the circuit court clearly indicated I should have received, and that is my reason for it.

"Mr. Ingraham: At this time do you want me to make an offer of proof on these matters that I am going into?

"Trial Examiner Batten: Of course, I don't know that it is necessary to make an offer of proof. If you want to, you can. I haven't excluded it.

"Mr. Ingraham: You have not excluded that testimony?

"Trial Examiner Batten: No.

"Mr. Reed: How, then, are we to try this case if—

"Trial Examiner Batten: Well, Senator, you are going to proceed, I hope, as I indicated yesterday, and I thought everybody understood, and take first the employees, in accordance with the offer of proof, which the court said I should have accepted.

"Now, that is the plan we are going to follow.

[fol. 242] "Mr. Reed: I seem to be unfortunate. Every time I try to make a statement you interrupt me. I would like to make a statement for the record.

"How are we to try this case if the Examiner undertakes to direct us as to what testimony we shall offer first and not tell us what other testimony will be received, but withholds his decision until we have put our witnesses upon the stand and examined them, within the limitations that he has fixed; then, after that is all done, he may open up the case and try many other things.

"Now, I simply protest that that method is unfair and I except to the ruling of the Examiner.

"Trial Examiner Batten: I understand, Senator, you excepted to it yesterday. You stated, however, that if I intended to pursue that policy, you would comply with it.

"Mr. Reed: We are forced to comply with it. I didn't state I would voluntarily comply with it.

228.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same), appearing at page 4350 of the transcript of the record (R. VIII. 2656), that "whether or not the employer exerted any pressure to exclude these people from the plant I don't think is material under these offers", and in refusing to permit petitioner to adduce such evidence.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4352, 4354, 4355, 4356 (R. VIII. 2657-8-9-2660), to-wit:

"Q. Did Mrs. Hyde say anything to you?

"A. She did.

"Q. What did she say?

"A. She asked me to please go back to my machine.

"Q. And what did you do?

"A. Well, I still wanted to go down and see who the other girl was. I didn't know the other girl. But she asked me repeatedly to go back to my machine and go to work, and I went.

"Trial Examiner Batten: Now, you see, Mr. Lane, what this leads into. You are leading into trying out the whole issue. \* \* \*

[fol. 243] "Trial Examiner Batten: The question here is how and why the Donnelly Garment Workers' Union was organized under the offers of proof.

"Mr. Lane: It is more than that. \* \* \*

"Mr. Lane: Now, Your Honor makes repeated reference to the offers of proof and the Board's offers of proof. I find nothing in the opinion which confines the Intervener or the Donnelly Garment Workers' Union or the Respondent to specific offers of proof. The opinion says the evidence of the employees was to be taken, whether they were dominated or coerced.

"Trial Examiner Batten: Of course, Mr. Lane, I am referring to my ruling that we are first going to take the testimony of the employees, in line with the offers of proof. Of course, if you concede this is in accordance with the offers of proof, it is not in accordance with my ruling. \* \* \*

"Mr. Reed: The difficulty is we are trying to do the impossible, we are trying to separate evidence which bears upon the whole case and limit it to bear upon one feature

of the case, and that feature of the case is an essential part of the case itself; so that our difficulty arises from that attempt to first try one particular question.

"Now, you can't try that question, you can't try the very question here, without introducing evidence as to what took place. This lady saw it, and everything that took place there was dragged into this case by both sides before.

"Now, this witness is asked how she felt, what her state of mind was; she saw this difficulty. What took place at that time would affect her mind, and what took place at that time would do something else; it would be a factor in arriving at any other conclusion whether the company was guilty of unfair labor practice by not going in and protecting these people.

"Trial Examiner Batten: Well, of course, Senator, that is not because of the order of proof, and it is not because of the issues in the case. The difficulties that we are running into is that we are trying to explore the minds of people.

"Mr. Reed: Yes.

"Trial Examiner Batten: Now, I don't care whether it is a Labor Board hearing or what kind of a lawsuit it is, when you attempt to do as we are doing here, explore peoples' mental reactions and their opinions—

"Mr. Reed: That is shown by what they do, isn't it?

"Trial Examiner Batten: But you get into serious difficulty. I feel that is what the Circuit Court wanted done; within the limits of our ability, I am going to comply with the Circuit Court's decision. I have made my ruling we are going to proceed in that manner. If I am wrong, Senator, we probably will be back here again.

[fol.244] "Mr. Reed: I think we will.

"Trial Examiner Batten: Well, I hope I live to be here; I have enjoyed it very much thus far, but I made the ruling, and that is the ruling which we are going to follow."



Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4358 to 4360 inclusive (R. VIII. 2661-2662), to-wit:

"Mr. Lane: Well, the Board has taken the position, apparently—

"Trial Examiner Batten: (Interrupting) The Board hasn't taken any position. The Board has set aside its decision and order, there is no decision and order in existence, so that can't be used as stating what the Board's decision is.

"Mr. Reed: Well, is there a record in existence that is a part of this hearing?

"Trial Examiner Batten: Well, I would assume so, Senator. At least we started with page 3000 and something, so I assume something precedes it.

"Mr. Reed: Well, the record is here, whether the Board did or didn't make a finding—we know it did make a finding. We know this point adverse to us was in the minds of the Court, and this case has been sent back here, and the Board is ordered to set aside its judgment and decision, and we are here now, prepared to try the issues in this case.

"Trial Examiner Batten: That is the very point I am glad you mentioned, Senator. I have felt that way for some time, that the position of the Respondent is that on every point I passed, the Board made an adverse finding in its prior decision and order; that means the Respondent can now come in here in a further hearing for a specific hearing, and attempt to disprove all the adverse findings brought.

"Mr. Reed: And that, not because of the adverse finding, but because we are entitled to put in this evidence, and the adverse findings simply go to this fact, that it is apparent that the Board has in its mind the importance of this question, and that their opinion was that we were

guilty under this particular phase of the charge. Now, we come back to try it. We have the old record here and we have the right to meet every contention that is made. That contention is made by the Board today, although it set aside its findings, and the record is there, and it is here now, undertaking to say that on that record made, which is now, as I understand, a part of this hearing, certain deductions we have drawn, and it drew them. Now, we come in and want to show the facts in this case; and to shut us off from that—

[fol. 245] "Trial Examiner Batten: (Interrupting) Of course, Senator, I can't agree with you that you are coming in here to show the facts; you are coming in here to show the facts on the basis of the remand of the Circuit Court.

"Mr. Reed: I understand that, and you and I differ on that radically, on what the remand is, and we object to the ruling that has been made, to the effect that we are confined here to our offers of proof, and then we make the further point that our offers of proof are broad enough to cover every contention that we have thus far made in this case; and that we have the right now, under the offers of proof, to meet every issue in this case; and we object and except to any rulings to the contrary.

"Trial Examiner Batten: Well, of course, I think the record is pretty clear, Senator, that you have excepted to all of these rulings."

231

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4365 (R. VIII. 2663), to-wit:

"Q. (By Mr. Lane) Will you state, Mrs. Saucke, what was said by anybody in the section?

"Trial Examiner Batten: Well, I'll object to that question and sustain my own objection. If this questioning indicates this witness can't identify what anybody said—I mean the names of anybody—then I would say the proper foundation is laid for your last question.

232.

Petitioner Assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4381, 4382, to-wit:

"Q. Who did you deal with in arranging that picnic?

"Mr. Reed: Now, if Your Honor please, isn't this utterly immaterial to this case? I submit that it is. It is a useless consumption of time.

"Trial Examiner Batten: You may tell us. Who did you deal with?"

[fol. 246]

233.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4393 (R. VIII. 2670), to-wit:

"Q. Do you remember what the vote was against you?

"A. No.

"Q. How was the vote conducted?

"Mr. Reed: If Your Honor please, isn't this testimony an utter waste of time.

"Trial Examiner Batten: Well, I don't know, Senator.

"Mr. Reed: Well, I am objecting to this line of questioning as incompetent and immaterial.

"Trial Examiner Batten: I'll overrule the objection. I think it has to do with the Donnelly Garment Workers' Union, Senator, clearly."

234.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4399, 4400, 4405-4406, 4410, 4411-4412, to-wit:

"Q. Did you know whether she would be a good person to represent you in the Donnelly Garment Workers' Union?

"Mr. Reed: Well, I object to that as utterly immaterial.

"Trial Examiner Batten: Well, she can answer.

"Mr. Reed: An opinion of the witness as to whether some other lady, whom she says she hardly knew, would be a good person to represent her or not—

"Trial Examiner Batten: She may answer.

"Mr. Reed: Well, I want to put my objection in. It is immaterial, outside of the issues in this case, and a useless consumption of time.

"A. Well, what little I have seen of her, I imagine she would be very capable.

"Q. (By Miss Weyand): Did you know her well enough to form an opinion?

[fol. 247] "A. I think I did.

"Q. And had you formed an opinion?

"Mr. Reed: I make the same objection.

"Trial Examiner Batten: Overruled. . . .

"Q. What discussions did you hear her participate in?

"A. I couldn't say.

"Mr. Reed: May my previous objection stand to any of this line of questioning?

"Trial Examiner Batten: Yes, you may have a continuing objection.

. . . .

"Q. Do you know what her opinion in regard to labor matters is?

"Mr. Reed: I object to that as calling for the information of somebody else, incompetent and immaterial.

"Trial Examiner Batten: Well, you have already answered it, haven't you?

"A. No, I haven't.

"Trial Examiner Batten: Well, you may answer.

"Mr. Ingraham: Respondent further objects, that the question is general.



"Trial Examiner Batten: You may answer. . . .

"Q. Did you ever hear him make any statement about labor matters? A. I don't remember.

"Mr. Reed: I wish to call to the attention of the Court that that question is unfair as it simply refers to labor matters. Now, there are a thousand—ten thousand different things that concern labor matters. The question does not mean anything in the form that it is put, and the witness might have to answer on matters entirely outside of this issue on labor matters. I got opinions on labor matters; most everybody has; and how many different opinions, and how many different kinds of questions is all open, it is all embraced in this one question on labor matters.

"I object to it as an improper form of examination.

"Trial Examiner Batten: We will recess until 20 minutes of 4. . . .

"Q. Did you know his character sufficiently to know whether he would make a good representative for the employees?

[fol. 248] "Mr. Reed: Now, I object to that as utterly incompetent and immaterial, did she know this man's character sufficiently to know whether he would make a good representative for the employees. How can that throw any light on this case? How can she be required to pass an opinion upon the qualifications of some man who is not even here in court?

"Trial Examiner Batten: Well, you may tell us whether you knew him well enough to have him represent you."

### 235.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4421 (R. VIII. 2674-2675), to-wit:

"Q. (By Miss Weyand) And did you participate in the nomination of Mildred Mattox? A. Yes, I did.



"Mr. Lane: If the Examiner please, the Intervener Donnelly Garment Workers' Union objects to that question; whether this witness, Mrs. Saucke, participated in the nomination of Mildred Mattox in April, 1938, as a member of a nominating committee, whether this witness acted wisely or unwisely in so participating, or whether this witness was casually or intimately acquainted with Mildred Mattox doesn't throw any light whatever on the issues of this proceeding, it is entirely irrelevant and immaterial, doesn't even approach the issue we are here to try out, and I object to it for that reason.

"Trial Examiner Batten: We will proceed.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled."

## 236.

Petitioner assigns as error the failure and refusal of the Trial Examiner (and the Board's action in affirming same) to rule upon and sustain the objection made at page 4426 of the record (R. VIII. 2676) as shown by the following excerpts therefrom, to-wit:

"Miss Weyand: She said she didn't know who Stella Willis was and I just wanted the record to show how completely ignorant she was on what goes on there at the Donnelly Garment Company.

"Mr. Lane: I object to the comment and move that it be stricken."

[fol. 249]

## 237.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4454, 4455, 4456 (R. VIII. 2689, 2690), to-wit: .

"Q. Do you know anything about the way it happened at this election? A. What year?

"Q. 1938, that the two tickets brought in each had Rose Todd for president on each ticket, Jack McConaughey for treasurer on each ticket, and Margaret Green for secretary on each ticket?.

"Mr. Reed: I object to that as immaterial; whether the witness noticed it or didn't notice it, is purely immaterial in this case."

"Miss Weyand: She was a candidate on one of the tickets for vice president, and I think she would be a good person to explain."

"Mr. Ingraham: I didn't know there was a vice presidential candidate."

"Trial Examiner Batten: Do you know anything about it?"

"A. I had nothing to do in making up those tickets, didn't know who was on those tickets until they were placed on the board in front of me."

"Q. (By Miss Weyand) And you didn't later learn how that happened?"

"A. I didn't even inquire."

"Q. You don't to this day know how that happened?"

"A. You mean how those names—"

"Mr. Reed: (Interrupting) She has already said she was not present, that she didn't know how the list were made up. Now she is asked if she didn't know how that happened; I object to it."

"Miss Weyand: (She indicated at that time—"

"Trial Examiner Batten: The question is whether she ever found out it occurred."

"Mr. Reed: Then it would be hearsay."

"Mr. Langsdale: That is not a question from the testimony in this case."

[fol. 250] "Trial Examiner Batten: Did you ever find out, Mrs. Saucke?"

"A. I never tried to find out."

"Q. (By Trial Examiner Batten) Then, you didn't find out? A. I didn't ask."

"Q. Then, if you didn't ask, you didn't find out, did you? A. No, I guess I didn't."

For the reason that the testimony elicited there and on similar matters shown in the succeeding pages of the record is wholly immaterial and irrelevant to the issues and does not tend to prove any of the charges in the complaint and obscures the real issues and contributed to the erroneous findings and conclusions of the Trial Examiner, and because said interposition of the Trial Examiner shows his partisanship and bias against petitioner.

238.

Petitioner assigns as error the constant interposition of the Trial Examiner (and the Board's action in affirming same) in the conduct of examinations by counsel and his refusal to rule on petitioner's objections and let counsel proceed to try the case in their own way, and his rulings, action and comments as same appear on pages 4483 to 4487 of the transcript of the record, said instance of such interposition by the Trial Examiner being but one of the hundreds throughout the record, all of which petitioner assigns as error.

239.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4511, 4512, to-wit:

[fol. 251] "Q. Now then, would you have done the things you did on April 23, 1937, at Sylvia Hull's machine if you had known she was going there to represent only members of the I. L. G. W. U.?"

"Mr. Reed. I object to that as incompetent and immaterial and asking the witness to testify to what she might have done under a state of facts which is not shown to have existed and which the witness did not have in mind, as shown by her own testimony.

"Trial Examiner Batten: Will you read the question, please?"

"(Thereupon the last question was read by the reporter.)"

"Trial Examiner Batten: You may answer.

"A. I certainly would, because the article also states they were going to call a strike.

"Q. That they were going to get permission—

"A. — to call a strike.

"Q. At any rate, you would have done and said exactly the same things you did say and do on April 23 at her machine or near her machine had you known she was going there to represent only employees of the Donnelly Garment Company that belonged to the I. L. G. W. U.?

"Mr. Reed. I renew my objection last made.

"Trial Examiner Batten: The objection is overruled.

"You may answer."

240.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) in ruling and requiring that the witness on the stand, Mrs. Warth, give the name of a friend who she stated had had her clothes torn in the I. L. G. W. U. strikes, and in striking out the testimony of said witness with reference thereto because of her refusal to state the name of said friend, which said rulings, comments and actions appear at pages 4565 to 4575 of the record (R.VIII. 2734-2738), and particularly in the following excerpts therefrom at pages 4573, 4574, 4575, (R. VIII. 2727-8), to-wit:

[fol. 252] "Trial Examiner Batten: If it is for the purpose of credibility, I will ask the witness to disclose the name.

"Mr. Reed: Do the counsel on the other side now say that they are going to test this lady's credibility by bringing in the witness, and do they vouch for the fact that that witness will contradict this witness?

"Trial Examiner Batten: That is not what I asked them. I asked Miss Weyand if it was a matter of credibility, and she said it was. I asked her, entirely so? And she said yes. Upon her statement, the witness may disclose the name of the person. . . .

"Mr. Reed: Are we, then, to understand that this question is to be asked, although limited to impeachment purposes, and that we can follow and show that this young lady, if she would come in and deny this, the fact back of it, or show, if she didn't deny it, that she spoke the truth?"

"Trial Examiner Batten: I am making no ruling of any kind, Senator, except to this witness, that she may disclose the name of the person.

"Mr. Reed: That's the trouble.

"Trial Examiner Batten: That isn't the trouble. If you believe you have the right to present such testimony, Senator, you present it, and at the time it is presented I will rule upon it.

"Mr. Reed: I am going to say to the witness that she has the right to withhold this name, if she wants to.

"The Witness: I think I will stand on that right, then.

"Trial Examiner Batten: All right. You may do so, and I shall strike your testimony with respect to this incident which was given on direct examination—

"Mr. Lane: Intervener excepts to the ruling of the Examiner.

"Trial Examiner Batten: —in accordance with the Board's rules.

"Mr. Reed: And we also except to the ruling."

## 241.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) refusing to permit petitioner to recall witness Wave Tobin to the stand and to continue its examination of her as shown by the following excerpts from the transcript of the Record at page 4692 (R. VIII: 2767), to-wit:

[fol. 253] "Trial Examiner Batten: Mr. Ingraham?

"Mr. Ingraham: I would like the record to show that Wave Tobin is present in court and has been present at every session since she was on the stand, and respondent again asks the right to continue its examination of her.



"Trial Examiner Batten: Has Mrs. Reed been in court since we started up again, Mr. Ingraham?"

"Mr. Ingraham: No, she has not."

"Trial Examiner Batten: Well, I think I can verify the fact for you that, as far as I recall, Miss Tobin has been here every day."

"We will proceed."

"Mr. Ingraham: And my request to be permitted to continue my examination of her will be denied?"

"Trial Examiner Batten: We will proceed in line with the ruling which I have previously made, Mr. Ingraham."

242.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) limiting the petitioner's examination of its witnesses strictly to the Examiner's conception of what is covered by the offer of proof and refusing to permit witnesses while on the stand to testify as to other material and pertinent phases of the case as set forth in the following rulings and comments of the Trial Examiner appearing in the transcript of the Record at pages 4755-56 (R. VIII. 2802-2803), to-wit:

"Mr. Reed: Will you pardon me at that point?"

"We are now running into the vice, I think, of—I don't say that disrespectfully of the ruling. You say at the present time we are going to hear only from the witnesses who were named and that you are going to confine the issues to the one question of offers of proof."

"Trial Examiner Batten: That is right."

"Mr. Reed: But hereafter you will leave it open."

"Trial Examiner Batten: I am not ruling upon that matter."

[fol. 254] "Mr. Reed: So, when we undertake to present our case we are handicapped by a ruling which limits our right to put in evidence on only one phase of the case, when the same witness that we have here could testify as to the other phases, if you hereafter admit them."

"Now, we ought to know what is coming into this case, Mr. Examiner. We ought to know now.

"Trial Examiner Batten: Senator, I would like to know, myself. If I knew, I could make a ruling, but I don't know, so I can't rule.

"Mr. Reed: So we all proceed in the dark.

"Trial Examiner Batten: We certainly do.

"Mr. Reed: Very well, then, I object to that procedure.

"Trial Examiner Batten: Except in accordance with the ruling I have made that we are first going to take the testimony which I rejected in the offers of proof. That is the order of proof and we are going to follow that."

## 243.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) in limiting petitioner's evidence to matters occurring within six months prior to March 18th, 1937, to-wit, from November, 1936 on, and in ruling that things prior to that date are not covered by the offers of proof and should not be received in evidence under the Examiner's ruling directing the order of proof, as set forth in the ruling and comments of the Trial Examiner appearing at pages 4763-64 of the transcript of the Record (R. VIII. 2808), as follows, to-wit:

"Trial Examiner Batten: I think we are ready to proceed, and I think the offers of proof contemplate the period in or about March 18, 1937, and as to any strikes or matters of that kind which occurred during that period, and I think it is reasonable to go back to—I think the offers contemplated at least a period, I would say from November on, and any things prior to that I will now rule aren't covered by the offers of proof, and therefore shouldn't be presented at this time, in line with my ruling directing the order of proof."

for the reasons among others that said ruling was and is unfair and prejudicial to petitioner and demonstrates the Trial Examiner's bias against petitioner and denies to [fol. 255] petitioner a fair trial and the opportunity to

meet evidence admitted on behalf of the Board and ILGWU and constitutes the taking of petitioner's liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

244.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) in the following excerpts from the transcript of the record at pages 4795-96-97-98 (R. VIII. 2823, 2824, 2825), to-wit:

"Miss Weyand: I am going to hand the witness Board's exhibit No. 2 and ask her to direct her attention to the second page thereof, which appears in the Circuit Court of Appeals record at page 4362, and ask her to read an article there appearing, entitled 'Nine Hundred Joined Loyalty League.' The article runs over to page 4363 of the Circuit Court of Appeals record.

"Mr. Reed: What is that?

"Miss Weyand. The article appears in the N. D. A. A. (being Nelly Don Athletic Association) News for February 1935.

"Mr. Ingraham: We object to the witness being examined about what appeared in the Nelly Don Athletic Association News. There is no showing that the company had anything to do with the publication or is in any way responsible for anything that appeared in it.

"Trial Examiner Batten: Of course, there isn't any question pending yet, Mr. Ingraham.

"Mr. Lane: Mr. Examiner, wasn't it your ruling this morning that you were going to confine the examination at this point to matters occurring within a reasonable time prior to April 27, 1937?

"Trial Examiner Batten: I say, there isn't any question pending yet to rule upon.

"Mr. Lane: She is directing attention to what occurred in 1935.

"Mr. Reed: I think if the Examiner will search his recollection, he will remember he refused to let Mr. Lane show the witness an article which lay outside of these limits, or examine about it.

(Thereupon the above-specified article was read by the witness.)

.....

[fol. 256] "Q. (By Miss Weyand) Did you read that article when it appeared?

"Mr. Ingraham: I object to that question as immaterial to any issue in this case.

"Trial Examiner Batten: Overruled.

"Mr. Lane: Interyener makes the same objection.

"Trial Examiner Batten: Overruled.

"A. I don't remember whether I read that or not.

"Q. (By Miss Weyand) Have you ever read this article before?

"A. I don't believe that I read it.

"Q. Did you attend the meeting here described as a meeting at which 900 persons were present and cards were passed out for membership in the Loyalty League?

"Mr. Ingraham: Now, I object to that question. It is outside the scope of the offers of proof, and the witness has stated that she did not read the article.

"Mr. Reed: Outside of the scope of the ruling this morning made.

"Trial Examiner Batten: Did you state, Miss Bagnes, that you did not read this article?

"A. I don't remember reading it in that pamphlet, no.

"Trial Examiner Batten: Of course, the question now is did she attend the meeting of 900 people, is that right?

"Miss Weyand: That is correct.

"Trial Examiner Batten: You may answer.

"Mr. Lane: I would like to have a continuing objection to showing the witness any article excluded by your ruling

this morning. This witness was questioned about something that happened in 1935 and 1936, and the Board has gone back to 1935, and I want to object.

"Trial Examiner Batten: Just a moment. You may have a continuing objection.

"Mr. Ingraham: The respondent would like to have the same continuing objection.

"Trial Examiner Batten: You may have the same continuing objection."

for reasons among others that said testimony and the testimony adduced thereafter and appearing on pages 4798 to 4805 of the record (R. VIII. 2825-2830, incl.), relating to the organization of the Loyalty League and similar matters is wholly immaterial and irrelevant to any [fol. 257] issue herein and contrary to the Trial Examiner's ruling that evidence of events occurring prior to six months before March, 1937, would not be received, and because said rulings are arbitrary, unfair and prejudicial to petitioner and demonstrate the biased and unfair attitude of the Trial Examiner toward petitioner and his non-judicial attitude toward the evidence by reason of all of which petitioner has been denied a fair trial and deprived of its liberty and property without due process of law.

245.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 4829-30-31-32 and 33 (R. VII. 2838-2839), to wit:

"Q. No one discussed those by-laws, did they?

"A. No.

"Mr. Reed: Wait a minute. I think counsel ought not to try to mislead the witness. If he puts in part of these minutes, he ought to put in the qualifying phrase that it was explained that the by-laws could be changed at any time. Isn't that right in the minutes before you?

"Mr. Langsdale: No. Here is what Mr. Tyler said about it, 'I suggest that if the by-laws are satisfactory someone move they be adopted'.



"Mr. Reed: Is that all that was said?

"Mr. Langsdale: And then the motion was made by Ellen Nokes that 'we accept the by-laws as they were read; seconded by Virginia White, unanimous acceptance.'

"Mr. Reed: Give me the minutes.

"Mr. Langsdale: Senator, I am examining this witness. Wait until I get through.

...

"Trial Examiner Batten: You may proceed. There is no question pending.

"Mr. Lane: I submit that with respect to the minutes, he read only a portion of them.

[fol. 258] "Trial Examiner Batten: Of course, he hasn't read all the minutes; but I say, Mr. Lane, there is no question pending.

"Mr. Lane: Well, his statement is incomplete and misleading.

"Mr. Langsdale: Are you trying to suggest to the witness part of her answer?

"Mr. Lane: No, I am not, but I am objecting to the misleading nature of your examination.

"Trial Examiner Batten: If there is any misleading here, I think I would intercede. I am convinced he was not misleading anybody. Will you proceed, Mr. Langsdale?

"Mr. Ingraham: We would like, before you proceed, to make an objection to the question, and move that the question and answer be stricken out.

...

"Mr. Reed: Well, I move to strike out the question as misleading and improper for the reason that there is no connection with the other matter called attention to, which counsel did not refer to, although he apparently was reading from the records. This was said, 'I suggest to adopt, then, the bylaws, and then leisurely amend them, when the majority of you wish them changed. They are drawn

as follows:' so that there was in this meeting a statement made that if they adopted them, then they could change them afterwards.

"Now, I think Mr. Langsdale, perhaps inadvertently, omitted to call attention to that fact.

"Mr. Langsdale: I didn't do it inadvertently. I don't have to read everything that happened at that meeting.

"Trial Examiner Batten: Read the question and answer, please; there is a motion to strike.

"(Thereupon the last question and answer were read by the reporter as follows:

"Q. No one discussed those by-laws, did they?

"A. No.")

"Trial Examiner Batten: I don't see anything improper with that.

"A. Mr. Examiner, I think before that I was asked if these bylaws were accepted, and I said they were accepted subject to change.

"Q. (By Trial Examiner Batten) Well, then, you weren't misled by any questions Mr. Langsdale asked you, were you?

"A. No, but he didn't read all of it.

"Trial Examiner Batten: Well, if you weren't, the motion is denied. Let's proceed."

[fol. 259]

246.

Petitioner assigns as error the interposition of the Trial Examiner (and the Board's action in affirming same) in the examination of witnesses throughout the hearing and as illustrated by the following excerpts from the transcript of the Record at page 4917 (R. VIII: 2862-2863), to wit: .

"Q. (By Mr. Ingraham) I will ask you to state whether or not after Mr. Baty took over the plant there was any change, to your knowledge, of the authority of instructors, passing on hiring or laying off or disciplining employees.

"A. I don't know as the instructors ever had that authority to hire and fire employees.

"Q. (By Trial Examiner Batten) You mean by that, not knowing whether they ever had it, you couldn't say whether there was any change? Is that what you mean?"

"A. Oh, yes, there was a change—

"Q. No. My question to you is, Not knowing whether the instructors ever had the right to hire and discharge, you couldn't say whether there was any change?"

"A. I know they never had the right to hire and discharge.

"Q. Well, then, can you say whether there was any change when Mr. Baty went in there?"

"A. Yes.

"Q. As to hiring and firing?"

"A. Well, as to—I don't know, but—

"Q. My question to you was, as Mr. Ingraham's question was, whether there was any change as to hiring and firing.

"Mr. Langsdale: I think the question was a little more comprehensive than that.

"Trial Examiner Batten. It may have been, but that was the point I was concerned about."

as showing the partisanship of the Trial Examiner against petitioner and his evident desire to elicit testimony favorable to findings and issues which he had already resolved in favor of the Board and against petitioner.

[fol. 260]

247.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4945-46:

"Trial Examiner Batten: What did you understand it to mean?"

"A. My understanding was she was going to represent all of us.

"Q. You mean from reading the article?"

"A. From reading the article.

"Mr. Langsdale: We certainly are not bound by understanding of someone who doesn't understand the English

language when she reads it. I ask that the answer be stricken out as utterly irrational and having no foundation or basis in the article."

"Trial Examiner Batten: It may stand."

"Mr. Reed: I am protesting against the insulting remark made to a witness on the stand."

"Mr. Langsdale: I don't consider it insulting but when I get ready to make that kind of remarks I will come around and take some lessons from you."

"Mr. Lane: I move to strike out the remarks of Mr. Langsdale for the reasons they are argumentative and they are not directed to the question I asked. They are not proper remarks to be made by counsel."

"Trial Examiner Batten: Do you have a question pending?"

"Mr. Lane: No, I am asking those remarks be stricken."

248.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 4962-63 (R. VIII. 2887-2888), to wit:

"Q. When was the first Loyalty League meeting, can you recall?"

"A. Well, the first Loyalty League meeting I recall was in 1935, I think, when they joined the organization down there to the plant; the Loyalty League is a social affair—we joined our clubs together, each section had a club."

[fol. 261] "Mr. Lane: Mr. Examiner, may it be understood the intervener, Donnelly Garment Workers' Union, has a continuing objection to inquiring into matters around 1935 or thereabouts? Your ruling was given when the intervener was going into matters except those within a reasonable time prior to April 27, 1937."

"Trial Examiner Batten: Well, of course, this question has nothing to do with my ruling, but I'll grant you the continuing objection."

"Mr. Lane: Well, she is inquiring of something that occurred in 1935.

"Trial Examiner Batten: Yes, concerning the Loyalty League, Mr. Lane.

"Mr. Ingraham: It is understood the respondent still maintains its objection to any matters prior to July 15, 1939.

"Trial Examiner Batten: I didn't understand it, unless you make it.

"Mr. Ingraham: Well, I made an objection at the first hearing as to all matters that occurred prior to July 15, 1939.

"Trial Examiner Batten: ~~You mean your original objection in the first hearing?~~

"Mr. Ingraham: That is correct.

"Trial Examiner Batten: Well, of course, the objection you made at that time, I assume, continues through the entire hearing.

"Mr. Ingraham: Well, that will be my understanding of it."

for the reasons, among others, that said rulings are contrary to the Trial Examiner's ruling refusing to permit petitioner to adduce evidence of matters occurring prior to six months before March, 1937, and for the further reason that said evidence does not tend to prove any of the charges against petitioner.

249.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) permitting counsel for the Board to interrogate the witness concerning Board's Exhibit 2 and other related matters appearing in the transcript of the Record at page 4983 (R. VIII. 2896) over the objections of petitioner and intervenor, for the reason that said examination is contrary to [fol. 262] the ruling of the Trial Examiner refusing to permit petitioner to adduce evidence prior to November, 1936, and for the further reason that said evidence does not tend to prove any of the charges against petitioner.



250.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth on pages 5006-07 of the transcript of the Record, to-wit:

"Q. Well, at that time did you learn that if you had a plant union and got a closed shop, that you could keep the I. L. G. W. U. out by firing everybody that joined it?

"Mr. Reed: That is what you do all the time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: Yes, I object to the question as improper; not proper cross-examination.

"Trial Examiner Batten: Overruled.

"A. What was the question?

"Trial Examiner Batten: Read the question.

"(Thereupon the last question was read by the reporter.)

"Mr. Lane: Well I object to that for the reason that it is not the situation, and never had been the situation, that everybody that joined the I. L. G. W. U.—

"Trial Examiner Batten: Is that an objection?

"Mr. Lane: Yes, that is an objection.

"Trial Examiner Batten: What is the objection?

"Mr. Lane: Because the question states a hypothetical situation.

"Mr. Ingraham: Respondent makes the same objection.

"Q. (By Mr. Lingsdale) Did you know or did you learn that at that time, if you should form a plant union, get a closed shop agreement, that everyone would have to belong to that union?"

[fol. 263]

251.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts of the transcript of the record (pages 5010-5011). (R. VIII. 2903), to-wit:

"Trial Examiner Batten: Of course, if the question is asked and answered, then an objection is not proper at this time, is it?

"Mr. Lane: You have been interrogating the witness yourself, so I didn't have an opportunity to make the objection. Now, my objection is, to the question Mr. Langsdale asked, the last portion of it, with respect to keeping—to preventing any employees from joining the I. L. G. W. U.—now, that is not a provision of the Wagner Act, and I submit counsel should not be permitted to ask that question, that if they get a closed shop they have a right to require all the employees to belong to that union, and the Wagner Act doesn't provide that every employee shall stay out of the I. L. G. W. U.

"Mr. Langsdale: Well, I say, Mr. Lane ought to go and read the Wagner Act, and read some of the decisions.

"Trial Examiner Batten: Well, if that is an objection, it is overruled, because the question has been put and the answer is in the record. So, you proceed, Mr. Langsdale."

252.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the excerpts from the transcript of the Record at pages 5063-64-65, (R. VIII. 2930, 2931), to-wit:

"Q. Did you know that you were being paid far in excess of wages that were being paid in plants that had contracts with the I. L. G. W. U. in Kansas City?

"A. I felt sure I was making far more than I would in some of these other factories.

"Q. Was this article—

"Trial Examiner Batten: How is that material? You say did she know. Well, of course, I have no objection to it, she had answered it. Of course, it doesn't mean that we are going into that whole question of whether, in fact, they were. The only question that will raise is whether or not this witness—what her own information is concerning the statement, whether it is supported by anything. I didn't want you to think that raises the whole issue of the truth.

[fol. 264] "Mr. Ingraham: We still contend that is an issue we are interested to go into and that even under your ruling, that is a factor that these employees have a right to consider.

"Trial Examiner Batten: Yes, that is what I just said.

• • • • •

"Trial Examiner Batten: I am only going into it to the extent I indicated. These witnesses have testified what it was that lead them to form the organization or why they did it. Now, I am permitting it to that extent and that doesn't mean I am excluding the testimony you indicated, Mr. Ingraham, that you still take the position it is an issue. I am not ruling on that matter now, only with respect to this witness' testimony."

253.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth on pages 5154 to 5160 and at pages 5168 to 5169 of the transcript of the Record, (R. VIII. 2973-2977; 2982-2983, incl.), as showing the bias and prejudice of the Trial Examiner towards petitioner and his evident desire to have elicited evidence [unfavorable] to petitioner even though the questions asked were clearly incompetent.

254.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 5203, 5204, 5205, to-wit:

"Q. Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?

"Mr. Reed: I object to that as incompetent and immaterial, entirely outside the issues in this case.

• • • • •

"Trial Examiner Batten: Will you read the question, please?

"(Thereupon the last question was read by the reporter, as follows:

" 'Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?')

"Trial Examiner Batten: Do you understand the question?

[fol. 265] "Mr. Reed: Now, how does that throw any light on the issues?

"Trial Examiner Batten: Do you understand the question, Mrs. Mudd?

"The Witness: I understand the question, but I don't believe he quoted me right.

"Trial Examiner Batten: Irrespective of whether he quoted you right or not, if you understand this question, you may answer.

.....

"Mr. Reed: I submit that question is incompetent and immaterial for any purpose, whether she thought she could ignore it or couldn't ignore it. She has simply said she read about the Act in the paper and she read it was before the Supreme Court, and there is no question of whether she wanted to ignore it or didn't want to ignore it; that is not in this case.

"Trial Examiner Batten: Do you recall the question, Mrs. Mudd?

"The Witness. Yes, but—

"Trial Examiner Batten: You may answer."

255.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) refusing to sustain petitioner's and intervenor's objections to questions propounded by the Board's counsel concerning the organization meetings of the Loyalty League and related matters extending back

as far as 1935, which examination together with petitioner's and intervener's objections appears at pages 5288 to 5301 of the transcript of the Record (R. IX. 3027-3034, incl.), for the reason that same are contrary to the rulings of the Trial Examiner limiting petitioner in the production of evidence to a time not prior to November, 1936, and because said rulings and action are emphatically unfair and prejudicial to petitioner, and by reason of which petitioner has been denied a fair trial herein.

[fol. 266]

256.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 5343-44 (R. IX. 3043), to wit:

"Q. Did the thought occur to you that getting that Loyalty petition signed and getting the pictures in the paper might be the answer of the company to Perlstein's interview?

"Mr. Reed. Read the question, please.

"(Thereupon the last question was read by the reporter.)

"Mr. Reed: I object to that as incompetent and immaterial and in no manner binding upon the parties to this case.

"Mr. Stottle: And assuming as evidence something that is not in evidence.

"Trial Examiner Batten: Do you understand the question?

"The Witness: I was going to say—

"Trial Examiner Batten: Well, do you understand the question that was asked you? Do you remember what it was?

"The Witness: Well, it referred to the pictures going to be in the paper.

"Trial Examiner Batten: Will you read the question please?



"(Thereupon the last question was read by the reporter.)

"Trial Examiner Batten: Do you understand the question?

"The Witness: Not clearly, not that part of it, 'answer of the company'. I don't understand just what he means.

"Trial Examiner Batten: Then, restate it, Mr. Langsdale. The witness says she doesn't understand the latter part of it:

"Q. (By Mr. Langsdale) Was there anything that came to your mind about the company's getting this petition signed and then having pictures in the newspaper as an answer to Perlstein's interview that you read 4 days earlier?

"Mr. Reed. I object to that as incompetent and immaterial and as assuming that the company had this petition signed, when all of the evidence is to the contrary.

"Mr. Langsdale: It isn't assuming at all. I am asking her—

"Trial Examiner Batten: The objection is overruled."

[fol. 267] for the reasons, among others, that same show the partisanship of the Trial Examiner and his desire to get into the Record an unfavorable statement of the witness with reference to the subject matter inquired about upon which the Trial Examiner was already committed in his previous findings and conclusions in this case.

257.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) that so far as the offers of proof are concerned and the employee witnesses are concerned with respect to petitioner, that he had heard sufficient and that anything further would be cumulative and would not enable the Examiner or the Board or the Circuit Court to get any better picture of the situation, and assigns as error the Trial Examiner's ruling and determination that he had heard enough employee witnesses both as to the petitioner and intervener, and in refusing to permit petitioner to call any

more employee witnesses or adduce any further testimony under petitioner's offers of proof and assigns as error his ruling and action in refusing to permit intervenor to put on any witnesses whatever or adduce any evidence whatever, under the offers of proof, for the reasons, among others, that said rulings and action are contrary to the holding of the Circuit Court of Appeals in remanding the case and contrary to the order of the Board herein in ordering a further hearing of this matter; and for the further reason that petitioner was prepared to call and place upon the stand all or substantially all of the witnesses named in the offers of proof referred to, and all of said witnesses would have testified to matters refuting each and all the charges against petitioner and such testimony would have presented to the Trial Examiner, the Board and the Circuit Court of Appeals an overwhelming case [fol. 268] sustaining petitioner's contentions and refuting all of the charges against petitioner, and because said rulings and action of the Trial Examiner deny to petitioner an opportunity to adduce said material, competent and relevant evidence bearing on the issues involved herein, whereby petitioner has been denied a fair trial and has been denied due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings having been made over and against the objections of petitioner.

In connection with this assignment of error, petitioner refers to the following excerpts from the record (pages 5797, 5800), (R. IX. 3253, 3255), and assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) set forth therein for each and all of the reasons hereinabove stated, to wit:

"Trial Examiner Batten: Is there anything further?

"Well, if not, I think I shall rule at this time that as far as the offers of proof are concerned, and the employee witnesses are concerned, with respect to the respondent, that I have heard sufficient; that anything further would be cumulative, and any addition wouldn't enable the Examiner or the Board or the Circuit Court to get any better picture of the entire situation; the light of the entire hearing, the entire record and exhibits. \* \* \*

"Trial Examiner Batten: Well, I feel, Mr. Tyler, if you want me to determine the question entirely myself, I take it that is in substance the same position which the respondent takes.

"Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.

"So, that disposes of that matter."

Petitioner further assigns as error the rulings and action of the Trial Examiner set forth above as constituting an abuse of any discretion vested in the Trial Examiner with reference to said matters and as being unfair and prejudicial to the petitioner and intervener by reason of other rulings and action of the Trial Examiner, and by reason of his subsequent rulings permitting the Board [fol. 269] and ILGWU to adduce in rebuttal extensive evidence which was not proper rebuttal but which related to matters which, if pertinent at all, should properly have been adduced in the Board's case in chief; and petitioner further assigns as error all the rulings and actions for all the reasons set forth in its exceptions to said rebuttal evidence.

258.

Petitioner assigns as error the ruling and action of the trial examiner in striking out all of the testimony of the witness Mrs. Reed pertaining to the period subsequent to July, 1939, for the reasons among others that said testimony is competent, relevant and material to many, if not all, of the issues involved in this case; and for the further reason that said ruling does not designate with any degree of certainty the particular evidence which it was the intention of the trial examiner to strike; and for the further reason that the trial examiner has permitted testimony to be adduced by the Board and ILGWU relating to the same matters to which said stricken testimony relates, and the striking of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial herein and denies to petitioner due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and action having been taken over and against the objections of petitioner.

In connection with this assignment of error, petitioner refers to the following excerpts from the transcript of the [fol. 270] record (pages 5800, 5801) (R. IX. 3255, 3256), for each and all of the reasons hereinabove stated, to wit: and excepts to the rulings and action therein set forth

"Trial Examiner Batten: \* \* \* Now, there are two or three other matters that I think I should dispose of with respect to Mrs. Reed. I am now striking out all of her testimony which pertains to the period subsequent to July 1939, in accordance with a ruling which I made after Mrs. Reed testified. \* \* \*

"Trial Examiner Batten: So, any matters after that are stricken".

259.

Petitioner assigns as errors the rulings and action of the trial examiner in rejecting the offer of proof made by petitioner with respect to the testimony of witness Wave Tobin which offer of proof is designated as Board's Exhibit 1-SSSSS and the trial examiner's determination that the matters therein are not material to the issues herein, and assigns as error the ruling and action of the trial examiner in ruling and determining that the testimony already given in the hearing by said witness Tobin is not material or relevant to the issues herein, and assigns as error the trial examiner's ruling and action in striking out the testimony of said witness Tobin, for the reasons among others that said testimony given by said Tobin and that offered to be proved by her in said offer of proof was and is competent, material and relevant to the issues herein, and for the further reason that said testimony so stricken and said testimony so offered to be proved by said witness relates to matters as to which the trial examiner permitted the Board and the ILGWU to adduce testimony, and the striking out of the testimony so given and the refusal [fol. 271] to receive the testimony so offered is unfair and prejudicial to petitioner and deprives petitioner of a fair trial herein and of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and actions of the trial examiner have been taken over and against the objections of petitioner.

In connection with this exception, petitioner refers to the following excerpts from the transcript of the record (pages 5802, 5802), (R. IX. 3257), and excerpts to the rulings, actions and comments of the trial examiner therein set forth for each and all of the reasons hereinabove stated, to wit:

"Trial Examiner Batten: Now, I think there is one other matter, the matter with respect to Wave Tobin. I believe at the time that matter came up Mr. Ingraham presented an offer of proof and a protest against the ruling of the examiner, which I made on August 19, 1942, which is Board's Exhibit 1-SSSSS. Now, as far as the offer of proof is concerned, I have gone over Board's Exhibit 1-SSSSS, and I don't consider that there are any matters in these which are material in the hearing, and therefore I reject the offer of proof; and furthermore—\* \* \*

"Trial Examiner Batten: And furthermore, with respect to the testimony which Wave Tobin has thus far given, I have reviewed that, and I do not consider that it is material or relevant to the issues in this case, and accordingly it is stricken.

"Now, with these rulings I think, Mr. Ingraham, we are ready to proceed."

Petitioner further assigns as error said rulings and action of the trial examiner because of his subsequent rulings permitting the Board and ILGWU to adduce in rebuttal evidence relating to matters which said witness would have testified concerning, and permitting evidence in rebuttal which was not proper rebuttal but which related to matters which should properly have been adduced in the Board's case in chief, if pertinent at all.

[fol. 272]

260.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to restrict the evidence of the Board and ILGWU after petitioner and intervenor rested in the further hearing, to proper rebuttal evidence and in permitting the Board and ILGWU to adduce extensive testimony which, if pertinent at all to the issues, was properly a part of their case in chief, and not proper to be offered in rebuttal.



These rulings arose upon petitioner's objections to the question asked of Board's witness Etta Dorsey at P. 5844 of the record (R. IX. 3276), as follows: "Q. How did you learn of that meeting (referring to the organization meeting of the Donnelly Garment Workers' Union on April 27, 1937), as not being proper rebuttal testimony, and upon petitioner's motion to strike the answer given and upon petitioner's objection to the succeeding question (at p. 5844-5), (R. IX. 3276): "Q. Do you know how the girls working in your section learned of the meeting?" as not being proper rebuttal testimony. The next fifty pages of the record (R. IX. 3276-3308, incl.), contain a discussion of this objection, as a result of which the trial examiner permitted the answer given to stand and permitted the Board to continue the examination upon matters covered by the Board's case in chief. To this ruling and action of the trial examiner petitioner assigns error for all the reasons and grounds set forth in the statements and arguments of petitioner's and intervenor's counsel appearing at p. 5844 and to p. 5895 inclusive of the record (R. IX. 3276-3309 incl.), and for the same reasons assigns as error all the testimony thereafter adduced by the Board and ILGWU [fol. 273] from said witness Etta Dorsey in pursuance of said ruling and action of the trial examiner.

In connection with this assignment of error and for convenience Petitioner refers to the following excerpts from the transcript of the record (pp. 5844, 5845, 5848, 5857, 5859, 5886 and 5894) (R. IX. 3276, 3279, 3285, 3286, 3303, 3308), setting forth the trial examiner's position and rulings to which rulings and action petitioner excepts for all the reasons aforesaid, which are too voluminous to be stated here, and for the further reasons that said ruling is unfair and prejudicial to petitioner in view of the trial examiner's rulings limiting petitioner's and intervenor's evidence to the offers of proof and in restricting petitioner to some ten or eleven employee witnesses and in refusing to permit intervenor to put on any witnesses, and because in applying said ruling the trial examiner permitted the Board and ILGWU to go far beyond even the limits set by the trial examiner in his said ruling as to rebuttal evidence, and as set forth in said excerpts from the transcript of the record, by reason of all of which pe-

itioner has been denied a fair and impartial trial and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States. The excerpts above referred to are as follows:

"Q. How did you learn of that meeting?

Mr. Ingraham: I object to that. It is not proper rebuttal.

Miss Weyand: This is a preliminary question.

Trial Examiner Batten: Well, if it is preliminary, she may answer.

Q. (By Trial Examiner Batten): Do you want the question read?

[fol. 274] "A. No, that's all right. Well, I don't remember, but it was either by telephone or by Mrs. Wherry telling us; she usually went around and told the instructors.

Mr. Ingraham: Now, I move that the answer be stricken out; it is not a preliminary question, it is an attempt to prove the Board's case in chief, not proper rebuttal.

Trial Examiner Batten: Well, I'll determine whether it is preliminary. You may proceed.

Mr. Reed: I couldn't hear your closing ruling.

Trial Examiner Batten: I said I will determine whether it is preliminary.

Mr. Reed: This answer, now, is not a preliminary answer.

Q. (By Miss Weyand): Do you know how the girls working in your section learned of the meeting?

Mr. Ingraham: I object to that question as not proper rebuttal." (R. IX. 3276)

.....

"Trial Examiner Batten: Well, all I can say is, Senator, I am going to require that Miss Weyand confine it to rebuttal. I further want to say that this undoubtedly is preliminary in nature. Now, if this lady, who was there at the time, is in position to testify concerning these definite things which these people testified to, I think it is rebuttal.

Now, I have no idea, and will say so now, of permitting Miss Weyand or Mr. Langsdale to go into this entire subject matter in any form or fashion, and it is confined to rebuttal." (p. 5848) (R. IX. 3279).

.....

"Trial Examiner Batten: Of course, there is possibility of that, Senator, providing I were to permit it. Now, we may differ as to just what is rebuttal. I think clearly Miss Weyand's first statement is entirely out of line, as far as I am concerned. I mean by that that you aren't going to try all the issues of this case over again, but I am still convinced in my own mind that if this witness testifies about these matters, which these four or five or six girls testified about here, that were in her section, and about specific matters in their testimony in the record, I don't see why that isn't rebuttal." (p. 5857). (R. IX. 3285).

.....

[fol. 275] "Trial Examiner Batten: Well, Mr. Langsdale, I think my statement that I have made two or three times, about what is rebuttal, would cover, perhaps, that matter. When a specific witness—you had several specific witnesses say that they worked in section 415 during March and April, that the instructor did not tell them to go to this meeting, nor did she say anything to them." (p. 5859). (R. IX. 3286).

.....

"Trial Examiner Batten: I think that particular matter is in line with the suggestion which I indicated this morning, without having given any thought to the matter. As a matter of fact, I am more certain now, after having given the matter some thought, that my statement this morning concerning it is correct, and I am equally certain that my statement to Miss Weyand this morning about her first proposition is correct. So, as the result of two hours or two and a half hours of giving it some thought and listening to all counsel, I am still of the opinion that my statement on it this morning was substantially correct." (p. 5886). (R. IX. 3303).

.....

"Trial Examiner Batten: Miss Weyand, you may proceed, in line with the suggestions which I made this morning, and if you have any other testimony in line with your other suggestion, you make it as an offer." (p. 5894). (R. IX. 3308).

261.

At pages 5895 to 5899 of the Record (R. IX. 3309-3311) petitioner objected to questions as shown by the following excerpts from the record and was allowed a continuing objection to said line of questioning, to-wit:

"Q. (Miss Weyand) Do you know how the girls working in your section learned of the meeting at which the union was organized?

Mr. Hogsett: That is objected to for all of the reasons heretofore asserted as not proper rebuttal and particularly unless the question is limited to the particular witnesses heretofore offered by respondent, by name.

Trial Examiner Batten: Well, you may answer the question, and then you may proceed, Miss Weyand, to bring it within the ruling which I made. (p. 5895). (R. 3309).

.....

[fol. 276] "Thereupon the last question was reread by the reporter, as follows: 'Q. Do you know how the girls working in your section learned of the meeting at which the union was organized?')

A. Yes, I do.

Q. (By Miss Weyand): How did they learn that?

A. I told the girls.

Mr. Hogsett: That is objected to, unless the question is confined to witnesses offered by respondent who were working there in her section. (p. 5896). (R. 3310).

.....

"Q. (By Miss Weyand): Was Oma Lee Cooper working in your section at that time?

Mr. Reed: I make the same objection.

.....

Trial Examiner Batten: Well, Senator, I assume we may have the same arrangement we have pursued here all the time, a continuing objection if you so desire.

Mr. Hogsett: Yes, we do.

Trial Examiner Batten: In order that you don't have to object to every question, that will continue through with this witness. Of course, it will be necessary to renew it on the next witness.

Mr. Tyler: The same objection will be allowed for the intervener, as to this witness, I take it?

Trial Examiner Batten: Yes, that is correct. Let me say this, we will get started here pretty soon, I guess. You may have a continuing objection.

Now, that means to either the respondent or the intervener I am granting a continuing objection to Miss Weyand's examining this witness within the bounds of what I indicated that I thought was proper.

Now, if Miss Weyand exceeds the bounds, I of course, would expect counsel to object, not upon the basis of my ruling, but upon the basis of my statement to Miss Weyand that I don't propose to go into all inclusive matters." (pp. 5898-99). (R. 3311).

Petitioner assigns as error the rulings and action of the trial examiner in admitting said testimony and in

[fol. 277] permitting the Board's counsel to continue said line of questioning, and assigns as error the rulings and action of the trial examiner in overruling petitioner's and intervener's objections to each and all of the questions asked by Board's counsel of the witness Etta Dorsey at pages 5895 to 5944 of the transcript for the reasons, among others, that said testimony is not rebuttal and does not come within the trial examiner's ruling as to rebuttal evidence, and covers matters which petitioner was not permitted to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.



Petitioner assigns as error the rulings, action and comments of the trial examiner denying and overruling each and all of the special objections made by petitioner and intervenor to particular portions of said testimony of Etta Dorsey, which objections and rulings appear on each and all of the following pages of the transcript; to-wit, 5900 to 5904 inclusive, 5907 to 5911 inclusive, 5913, 5914, 5916 to 5922 inclusive, 5924 to 5929 inclusive, 5931 to 5936 inclusive, 5938 to 5941 inclusive and 5943 respectively (R.IX. 3312-3342 incl.), for each and all of the reasons given in said respective objections and for the further reason that said questions related to matters which the trial examiner refused to permit petitioner and intervenor to go into in further hearing, and because same does not come within the trial examiner's ruling as to rebuttal evidence, and be-[fol. 278] cause by the admission and consideration of said testimony petitioner has been denied a fair trial and due process of law.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the Record at pp. 6042-6043 (R.IX. 3397-3398), to-wit:

"Q. Did the mere fact that you said, 'There is to be a meeting of the employees' in your opinion amount to an order to attend it?

A. Well the girls felt like I had the authority—I was given that authority. See?

Mr. Tyler: Now, I object—

Mr. Langsdale: Just a moment. He asked the question, and I suggest that he keeps still until she answers it, and then if he wants to move to strike out any part of it, all right.

Trial Examiner Batten: Just a moment.

Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

"Trial Examiner Batten: Now, finish your answer.

A. (Continuing) The girls felt like I had the authority to tell them what to do, and when I said, 'Do this', they usually did it.

Mr. Tyler: Now, I move that the answer be stricken out, because it doesn't state whether she felt she was giving the order, but only what she assumes the employees understood, which wasn't the question, and is a conclusion of the witness.

Mr. Langsdale: I submit, the answer is a perfect answer to his question. Certainly she has a right to judge from appearances and conduct of these people. And this is a pretty late day for Mr. Tyler to be talking about conclusions of the witness.

Mr. Stottle: Respondent objects because it is not responsive at all to the question."

[fol. 279]

263-a.

Petitioner assigns as error the rulings and action of the trial examiner in overruling petitioner's objections to the Board's questions of the witness Lola Skeens as shown in the following excerpts from the transcript of the record at pages 6096-6098 and 6100 of the transcript (R.IX. 3427-3430), to-wit:

"Q. Do you know of any occasions upon which she went to Mr. Tyler's office or attended to business of the Donnelly Garment Workers' Union during working hours?

Mr. Hogsett: Objected to as not rebuttal of anything in the respondent's case.

.....

Trial Examiner Batten: You may answer.

Mr. Reed: Now, that embraces more than whether she went to the office. The question is, whether she knows of any occasion when she went to his office or attended to business of the union on company time. Now, that is not in rebuttal of anything we have put in this case.

.....

Q. Do you know how the girls working in your section learned of the meeting?

A. I told them.

Mr. Ingraham: May respondent have a continuing objection to this line of questioning?

Trial Examiner Batten: Yes.

Mr. Hogsett: As not rebuttal.

Trial Examiner Batten: I presume it is upon the same grounds stated as to the previous witness."

for the reason that said testimony and rulings do not come within examiner's ruling as to rebuttal evidence and relates to matters which petitioner and intervener were not permitted to go into in said further hearing and the admission of same is unfair and prejudicial to petitioner and [fol. 280] denies to petitioner a fair trial and due process of law. In pursuance of the continuing objection allowed to petitioner by the trial examiner to said line of questions and testimony, respondent further assigns as error the admission of the testimony thereafter adduced by the Board and ILGWU from said witness Lola Skeens in pursuance of said ruling and action of the trial examiner appearing in the transcript of the record at pages 6098 to 6114 inclusive (R.IX. 3429-3440, incl.), and at pages 6166 to 6168 inclusive (R.IX. 3468-3469), for the reason that same is not proper rebuttal evidence but if pertinent to the issues at all was a part of the Board's case in chief, and for the further reason that same does not come within the limits set by the trial examiner as to rebuttal evidence and for the further reason that same relates to matters which the trial examiner refused to permit petitioner and intervener to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

264.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6172 to 6174 inclusive (R.IX. 3471-3473), to-wit:

“Mr. Hogsett: If the court please, we object to this line of examination on the ground that it isn’t rebuttal of anything. In other words, it is just going into the Board’s case in chief again.

Trial Examiner Batten: I think it is, insofar as it attempts to determine what transpired at the meeting.

Mr. Hogsett: Yes, that is the line of inquiry I am now objecting to.

[fol. 281] “Trial Examiner Batten: But, of course, part of this testimony as I recall it, was this witness’ statement as to why she joined.

Mr. Hogsett: Which is not rebuttal either.

Trial Examiner Batten: Well, let’s take them one at a time. I agree with you that the other matter, I don’t believe is, the matter as to what transpired. But I gathered from the questions that it was an attempt of Miss Weyand’s to set the time of the occurrence rather than what transpired.

Mr. Hogsett: Then, if that is so, I move to strike all of the testimony of this witness as to what transpired at the meeting of April 27, 1937, because it isn’t proper rebuttal.

Trial Examiner Batten: I think it may stand, because I think that was the purpose of it.

Mr. Hogsett: And I move to strike out what occurred at the latter meeting, for the same reason.

.....

Mr. Ingraham: May respondent have a continuing objection to this testimony, for reasons we have heretofore given?

Trial Examiner Batten: Yes. Of course, I agree that going into what transpired at the meeting is not proper rebuttal, but, as I said before, I don’t think that is the purpose of it.”

for the reason that said testimony is not proper rebuttal evidence and in pursuance to the continuing objection al-

lowed. Petitioner by the trial examiner petitioner assigns as error said rulings and the admission of all the testimony of said witness Geneva Copenhaver adduced by the Board and ILGWU in pursuance of said ruling and action of the trial examiner, appearing in the transcript of the record at pages 6169 to 6200 inclusive (R.IX. 3470-3480; R.X. 3481-3487 incl.), and pages 6280 to 6287 inclusive (R.X. 3532-3537), for the reason that said testimony is not proper rebuttal evidence, and does not come within the limits of the ruling of the trial examiner as to rebuttal evidence and relates to matters which the trial examiner refused to permit petitioner and intervener to go into in said further hearing and is contrary to former rulings of the [fol. 282] trial examiner and the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

265.

Petitioners assigns as error the rulings and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6176-77-78 (R.IX. 3474-75-76), for the reasons stated in petitioner's objections therein made, to-wit:

"Miss Weyand. I offer Board's exhibit No. 37 for identification in evidence.

Mr. Reed. We object—

Trial Examiner Batten: What—For the purpose of indicating it recalled to the witness' mind that she attended the meeting?

Miss Weyand: No. I want to offer it for the purpose of showing that every girl that attended that meeting, as far as I can see, is in uniform. I think that is proper evidence for the Board to consider in connection with the testimony—

.....

Trial Examiner Batten: I am certain everything said officially there is in the record. It doesn't make any difference. I will receive it, and I am receiving it on the same basis I have received other newspaper articles which have been received thus far—I think, about 38 of them.



Mr. Reed: We object as incompetent and immaterial and not proper direct examination, undertaking to introduce into the case as substantive evidence a mere newspaper article, and as not proper rebuttal.

Mr. Langsdale: I understand the article itself is not offered but merely the picture.

Trial Examiner Batten: Well, I have received it."

265-a.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6178-79 and 6182, (R.IX. 3476, 3479), to-wit:

[fol. 283] Q. Were you working on the same floor with Sylvia Hull the last day Sylvia Hull worked for the company?

A. Yes, I was.

Q. Do you recall what happened that morning?

Mr. Tyler: We object. The Sylvia Hull incident is in no sense proper rebuttal. It was gone into in long detail in the case of the Board in chief.

Mr. Hogsett: Your Honor, I ask you to just stop for a second and think if this is rebuttal—everything is rebuttal that pertains to the case in any way.

Trial Examiner Batten: Of course, my idea of the Sylvia Hull incident is this:—I tried to, I think, in my talk here a month or so ago, indicate I did not think it was within the offers of proof upon which I was taking testimony, but I don't remember whether Mr. Tyler, or who it was convinced me that I was wrong. I know Mr. Langsdale very strenuously opposed it and said it was a closed book.

Mr. Hogsett: I ask you to draw the line somewhere, if the Examiner please.

Trial Examiner Batten: As I recall, both witnesses presented by the Board so far has been permitted to testify about the matter.

Mr. Langsdale: Yes.

Trial Examiner Batten: You may proceed, Miss Wey and."

for each and all the reasons therein stated in petitioner's and intervenor's objections and for the further reason that said questions relate to matters which the trial examiner refused to permit the petitioner and intervenor to go into in said further hearing and because same does not come within the limits of the ruling made by the trial examiner as to rebuttal evidence and because same are contrary to former rulings made by the trial examiner in said further hearing and because same are unfair and prejudicial to petitioner and deprive petitioner of a fair trial and due process of law.

[fol. 284]

266.

Petitioner assigns as error the ruling and action of the trial examiner in refusing to permit petitioner to recall Wave Tobin to the stand, as shown by the following excerpts from the transcript of the record at page 5815 (R. IX. 3265), to wit:

"Mr. Reed: Now, Your Honor said for us to proceed. We would now like to recall Wave Tobin, we haven't finished her examination.

"Trial Examiner Batten: Well, I think, Senator, I disposed of that matter by my ruling on the offer of proof, and so forth."

267.

Petitioner assigns as error the rulings and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6189, 6190 (R. X. 3481), to wit:

"Q. Did you consider your instructors as supervisors?

A. Absolutely.

Mr. Ingraham: Now—

Trial Examiner Batten: Just a moment?

Mr. Ingraham: Now, I move to strike the answer out as not proper rebuttal.

Trial Examiner Batten: Well, the answer may be stricken. While you make your objection—I assume you had one?

Mr. Ingraham: Yes. I object to the question on the ground that it is not proper rebuttal.

Trial Examiner Batten: You may answer.

Mr. Lane: The intervener makes the same objection.

Trial Examiner Batten: You may answer.

A. Absolutely, I regarded her as being my supervisor.

Q. (By Miss Weyand) Why?

Mr. Ingraham: May I have a continuing objection?

[fol. 285] Trial Examiner Batten: Yes. Well, I think there is already a continuing objection on this witness.

Mr. Ingraham: Well, if not, I want a continuing objection".

And further assigns as error the admission of subsequent testimony of the same nature received in pursuance of this ruling.

268.

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6197, 6198 (R. X. 3486), to wit:

"Q. Do instructors eat in the cafeteria with the other girls?

A. They eat—

Mr. Ingraham: (Interrupting) Now, I object to that question for the reason it is immaterial to any issue in this case, and it is not proper rebuttal.

Mr. Hogsett: If I may supplement by this suggestion, that illustrates the thin character of this Board's case, that they would have to rely on the fact that domination could be shown by an instructor eating in the same cafeteria. Now, that is getting down to pretty thin stuff, I submit, and the subject matter is wholly immaterial.

Miss Weyand: I don't offer to prove they eat in the same cafeteria. That isn't the purpose of this question.

Mr. Hogsett: Well, it is in the same field, the same atmosphere.

Trial Examiner Batten: You may answer the question.

Mr. Lane: The intervener makes the same objection, it is not rebuttal.

Trial Examiner Batten: The same ruling."

269.

Petitioner assigns as error the ruling and action of the trial examiner in sustaining objection to the question asked by counsel for the intervener of the witness Copenhagen at page 6250 of the record (R. X. 3518) as to what was her husband's occupation.

{fol. 286}

270.

Petitioner assigns as error the ruling and action of the trial examiner in permitting the witness Bessie Weilert to testify as to matters which were not proper rebuttal evidence over the objections of the petitioner and intervener, which objections appear in the transcript of the record at page 6311 (R. X. 3531-3552), as follows, to wit:

"Q. (By Miss Weyard) Had you ever seen Mr. Tyler before the meeting at which the union was formed?

A. No.

"Mr. Lane: Mr. Examiner, with respect to all of these questions, the intervener objects, with respect to this witness, as not proper rebuttal.

Trial Examiner Batten: You may have a continuing objection.

Mr. Ingraham: Respondent makes the same objection."

Trial Examiner Batten: You may have a continuing objection.

And petitioner assigns as error the rulings and action of the trial examiner in permitting the Board's counsel and counsel for the ILGWU to continue said line of questioning of the witness Bessie Weilert and excepts to each and all the questions asked by Board's counsel and by counsel for the ILGWU of said witness as set forth in the record at pages 6308 to 6355 inclusive, 6358 to 6360 inclusive, 6435 to 6458 inclusive, 6496 to 6514 inclusive, and 6528 (R. X. 3550-3581; 3615-3621; 3631-3636; 3639), in pursuance

of said continuing objection, and assigns as error each and all the rulings of the trial examiner permitting said evidence to be adduced, for the reasons among others that said testimony is not proper rebuttal evidence and does [fol. 287] not come within the trial examiner's ruling as to rebuttal evidence, and for the reason that same relates to matters with petitioner and intervenor were not permitted to go into in said further hearing, and is contrary to prior rulings of the trial examiner and the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

271.

Petitioner assigns as error the rulings, action and comments of the trial examiner in refusing to sustain the objections and motions to strike of the respondent and intervenor to the testimony given by the witness Bessie Weilert at pages 6315 to 6317 inclusive (R. X. 3554-3556) for the reason that said testimony was not proper rebuttal testimony, related to a time prior to November, 1936 to which the trial examiner limited petitioner in its examinations and related to alleged events occurring prior to the enactment of the National Labor Relations Act, and is wholly immaterial, incompetent and irrelevant to the issues herein.

272.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to sustain petitioner's objections and motion to strike out the answers and testimony of the witness Bessie Weilert given at pages 6327 to 6329 inclusive (R. X. 3561-3563) for the reason that said testimony was not responsive to the questions asked and was not proper rebuttal testimony.

[fol. 288]

273.

Petitioner assigns as error the ruling and action of the trial examiner in refusing to strike out the answer of the witness referred to in the following excerpts from the transcript of the record at page 6343 (R. X. 3572), to wit:

"Q. Do you know Mrs. Gray?

A. I do.

"Q. Who is she?

A. She was manager of our outside store.



Mr. Langsdale: I didn't get the answer.

A. She was manager of our outside store, to my knowledge.

Q. (By Mrs. Wyand) How do you know she is the manager?

A. Well, we always had to see Mrs. Gray if we wanted anything in the store, to see Mrs. Gray, and when it was remnant bundles, she would send i. d. m's, and say it was the remnant bundles.

Mr. Reed: I can't understand the witness.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

A. And [she] signature was on the i. d. m.

Mr. Lane: Now, I move to strike out the answer that Mrs. Gray was manager of the store, for the reason it is a mere conclusion; and the following answer of the witness doesn't state any facts upon which the conclusion can properly be based.

Trial Examiner Batten: It may stand."

274.

Petitioner assigns as error the ruling of the trial examiner at pages 6349, 6350 (R. X. 3574), permitting the witness Bessie Weilert to state that she considered the Donnelly Garment Workers' Union a company dominated union or a company union and to state why she thought [fol. 289] so, as follows: "A. Because it seemed it never done any good when you took grievances up with that committee; I never did get anywhere when I was on the committee, and everything went just as the company seen fit."

275.

Petitioner assigns as error the rulings, action and comments of the trial examiner at pages 6444 to 6446 inclusive (R. X. 3620), in permitting the witness Bessie Weilert to answer the question of counsel for the ILGWU, to wit: "Q. (By Mr. Langsdale) So then this part of this document, which you signed, is not true? and the question: "Q.

(By Mr. Langsdale) Or 'That said meeting was convened after the close of working hours at the plant'. That is not true, is it?" and in overruling petitioner's and intervener's objections thereto.

276.

At pages 6497 of the record (R. X. 3632), counsel for the Board asked the following question and the witness Bessie Weilert made the following answer, to wit:

"Q. (By Miss Weyand) Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?

"A. I don't know that they put it in those words, that, it was merely because of the complaint, but I think it was done, plenty of them."

Petitioner and intervener moved to strike out the answer and particularly that part of the answer "but I think it was done, plenty of them" and the trial examiner ruled that it should stand, to which ruling and action petitioner excepts for the reason that said answer is a conclusion, not proper rebuttal and prejudicial to petitioner.

[fol. 290]

277.

At page 6536 of the record (R. X. 3640-41), the following occurred:

"Q. I hand you ILGWU Exhibit No. 10 which appears at pages 5375 and 5961 of the Circuit Court of Appeals record and ask you to state when you first heard of that petition.

A. In the early spring of 1937.

Q. Where were you when you first heard of it?

A. In Mrs. Reed's home.

Q. What was the conversation that took place on that occasion?

A. Well, I had just come home from New York, and—

Mr. Lane: Just a moment, if Your Honor please. The intervener objects to this and all similar questions. It is not proper rebuttal testimony.

Mr. Hogsett: We join in that objection.

Trial Examiner Batten: Overruled."

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the foregoing excerpt and his action in permitting the Board's counsel and counsel for the ILGWU to continue said line of questioning of the witness Keyes, and further excepts to each and all the questions of said counsel to said witness, appearing in the transcript of the record at pages 6535 to 6552 inclusive (R. X. 3640-3652, incl.), for the reasons that said testimony is not proper rebuttal evidence and does not come within the limits of the ruling as to rebuttal evidence made by the trial examiner, and for the reason that same relates to matters which petitioner and intervenor were not permitted to go into in said further hearing and is contrary to prior rulings of the trial examiner, and the [fol. 291] admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

278.

At pages 6572-6573 of the record (R. X. 3662) appears the following:

Q. Did you attend any meetings of the Loyalty League?

Mr. Tyler: Intervenor objects, because this is not proper rebuttal.

Mr. Hogsett: We join in that objection, asking that counsel be restricted to rebuttal.

Trial Examiner Batten: You may proceed.

Mr. Hogsett: May we have a continuing objection, as in the case of other witnesses?

Trial Examiner Batten: Yes.

Mr. Tyler: And the intervenor also?

Trial Examiner Batten: Yes."

Petitioner assigns as error the rulings and action of the trial examiner as set forth in the foregoing excerpts from the record and further excepts to the rulings and action of the trial examiner in permitting Board's counsel and counsel for the ILGWU to continue examination of said witness May Steyens, and to each and all the questions

asked by Board's counsel and by counsel of the ILGWU of said witness as set forth in the transcript of the record at pages 6573 to 6595 inclusive and 6638 to 6647 inclusive (R. X. 3662-3676; 3695-3698), and to each and all the rulings of the trial examiner permitting said evidence to be adduced on behalf of the Board and ILGWU, for the reasons, among others, that said testimony is not proper rebuttal evidence and does not come within the trial examiner's ruling as to rebuttal evidence, and for the reason [fol. 292] that same relates to matters which petitioner and intervenor were not permitted to go into in said further hearing and is contrary to prior rulings of the trial examiner, and the admission of same is unfair and prejudicial to respondent and denies to petitioner a fair trial and due process of law.

279.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6581, 6582, 6584 (R. X. 3668, 3669), to wit:

"Q. What made you feel that way?

A. Well, the Fern Sigler incident, just previous to that, and by Mrs. Donnelly saying we would never have to have a union, and I decided that they had changed so [suffden] that it was surely something for the company and I had better join. And when in 1934, when I was in another shop, at Twenty sixth and Main, I met the Donnelly girls they had sent to that plant that were union girls—

Mr. Reed; Oh, wait a minute, now. That certainly is not rebuttal.

Trial Examiner Batten: Now, let the witness finish, Senator. If there is something you think should be stricken, all right, but don't interrupt the witness.

Read the answer thus far, please.

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: Finish your answer.

A. (Continuing)—and talked to them most every day about the conditions and why they were sent down there, and they were told that they were not making their guaran-

tee, and they knew it was because they were union girls and that they would eventually be laid off.

Mr. Reed: I move to strike that as incompetent, immaterial, and as not rebuttal, being mere hearsay, and binding on no one. I think the Examiner excluded us from the right to even ask questions about 1934.

[fol. 293] "Trial Examiner Batten: Well, Senator, assuming I did, hasn't this witness a right to say why she felt that way? \* \* \*

"Trial Examiner Batten: It may stand."

for the reasons therein stated and because said ruling is unfair and prejudicial to petitioner and shows the bias and prejudice of the trial examiner against petitioner.

280.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to permit the witness May Stevens to answer the following question appearing in the record at page 6606 (R. X. 3683), to-wit:

"Q. By the way, what was your husband then, an organizer for the Union?"

and in rejecting the following offers of proof made by petitioner and intervener appearing in the transcript of the record at pages 6608, 6609 (R. X. 3685), to-wit:

"Mr. Hogsett: We offer to prove that the witness on the stand that at the time concerning which she has been testifying, namely, in February, March and April, 1937, and continuously up to the present time, her husband then was and at all such times has been and is now an organizer for a labor union.

Trial Examiner Batten: Well, I'll reject the offer on the basis of what I have just said.

Mr. Hogsett: Yes, Mr. Ingraham says that we desire now to make a similar offer of proof in relation to Geneva Copenhaver. \* \* \*

Mr. Tyler: Intervener asks to be allowed to join in both offers of proof.



Trial Examiner Batten: You don't mean Mr. Langsdale's proof.

Mr. Tyler: No, Mrs. Copenhaver and this one.

Trial Examiner Batten: Both of the offers made by Mr. Hogsett? Mr. Tyler wants to join in the two offers of proof made by Mr. Hogsett."

[fol. 294]

281.

Petitioner assigns as error the rulings, action and comments of the trial examiner in sustaining objection to the following question asked by petitioner of the witness May Stevens at page 6662, to-wit:

"Q. (By Mr. Hogsett) Do you remember the taking of an oath in such a way that you would knowingly make a false affidavit" and in rejecting respondent's offer of proof (page 6663) that the witness if permitted to answer said question, would answer same in the affirmative.

282.

Petitioner assigns as error the comment of the trial examiner embraced in the words "without all of the flourishes" contained in the following excerpt from the transcript of the record at page 6667, to-wit:

"Q. The fact is, the Sylvia Hull incident occurred some seven weeks after the March 2 paper was signed by the employees, didn't it?

Mr. Langsdale: I object to that as argumentative.

Trial Examiner Batten: The question is, Did the Sylvia Hull incident occur seven weeks after?—without all the flourishes.

Mr. Hogsett: Well, I don't know why there is any flourish."

283.

Petitioner assigns as error the ruling, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at page 6702 (R. X. 3710):

"Trial Examiner Batten: Now, you may answer this if you want to, Mr. Ingraham, and if you don't want to you don't need to: Am I to assume you are going to have all of the girls in Section 518 here and testify about these specific matters?

[fol. 295] "Mr. Ingraham: I believe we are going to have a large number of them.

Trial Examiner Batten: Well, I want to tell you now that you are not, so don't plan on it. I would say, not to exceed three witnesses on those matters, out of that section."

for the reasons, among others, that said limitations upon petitioner to three witnesses out of said Section 518 was unfair and prejudicial to petitioner, for the reason that said testimony related to highly important issues in view of the former findings of the Board and trial examiner and of the contentions of the Board and ILGWU in this hearing, and unless the trial examiner was satisfied that the testimony of said three witnesses established the facts to which they testified, the limitation was unfair and prejudicial to petitioner, and in any event petitioner was entitled to put on additional witnesses for the consideration of the Board and Court and the limitation denied to petitioner a fair trial and due process of law.

284.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6704-5-6 (R. X. 3712, 3713):

"Q. (By Mr. Ingraham) There has been testimony given that the girls returned to work in that section after attending meetings. What are the facts about that?

Trial Examiner Batten: Now, Mr. Ingraham, I do not believe that is proper surrebuttal, because there was testimony by some witnesses concerning that and the Board put on some concerning it. Now, I don't believe that is proper questioning at this stage of the proceedings.

Q. (By Mr. Ingraham) There has been testimony given that if an operator did not intend to come to work

she would notify her instructor. What are the facts about that?

[fol. 296] Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Ingraham) There has been testimony given that after Mr. Baty took charge of the factory in 1935, and up until July 15, 1939, instructors had the authority to transfer girls from one section to another. What is the fact about that?

Mr. Langsdale: Objected to as not proper surrebuttal. Mr. Baty in 1939, ran the whole gamut with reference to that particular issue.

Trial Examiner Batten: Objection sustained.

Mr. Ingraham: Respondent offers to prove by this witness that if she were permitted to answer the question to the effect that, Did girls return to work after attending any of the meetings referred to? she would answer in the negative.

Respondent further offers to prove by this witness—

Mr. Langsdale: Just a moment. I want to make an objection to that offer, for all of the reasons offered to the question.

Trial Examiner Batten: Proceed.

Respondent further offers to prove by this witness that if she were permitted to answer the question as to whom the girls would notify if they were not coming to work, she would answer, 'The employment office', and not 'the instructor'.

Mr. Langsdale: That is objected to in the offer for all of the reasons offered to the question.

Trial Examiner Batten: Any others?

Mr. Ingraham: No, that's all.

Trial Examiner Batten: The offers are rejected."

for the reasons, among others, that said rulings and action prevented petitioner from adducing proper and highly material evidence in view of the former findings of the trial examiner and Board and the issues as developed in the hearing, and by the denial thereof petitioner has been denied a fair trial and due process of law.

[fol. 297]

285.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6706-7-8-9 (R. X. 3713-14-15), to-wit:

"Q. (By Mr. Tyler) Mrs. Chaney, did you ever know of any instructor directing the girls in her section to go with her, the instructor, to any union meeting?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you hear Etta Dorsey give any instructions or information about the holding of union meetings to the girls in her section?

Mr. Langsdale: Objected to as not proper surrebuttal, and repetition.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you ever see any group of girls being herded together to a meeting of the union by any instructor?

Mr. Langsdale: Objected to as not proper surrebuttal. Respondent has so characterized it.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): You joined the Donnelly Garment Workers' Union of your own free will?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: Sustained.

"Q. Do you know whether the employees of the Donnelly Garment Company obtained any improved conditions by the contract which the union made with the company in May 1937?"

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

.....

[fol. 298] "Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether she ever saw any group of girls taken to union meetings by the instructor, would answer that she did not.

Mr. Langsdale: That offer is objected to for the reasons offered against the question.

.....

Mr. Tyler: \* \* \* \* And I offer to prove that this witness, if asked the question whether there was any evidence of employees being herded to the union meetings, would answer No.

I offer to prove by this witness that if she were allowed to testify as to whether she knew of benefits received by the employees as a result of the contract of the Donnelly Garment Workers' Union with the company of May 27, 1937, would state that she did not know of definite benefits received by reason of that contract.

Mr. Langsdale: The offers are objected to for the reasons given against the questions.

Trial Examiner Batten: The offer is rejected.

Mr. Tyler: Of course, it is understood that an exception is allowed, without stating—

Trial Examiner Batten: Yes, you have an automatic exception."



286.

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the following excerpts from the transcript of the record at page 6716 (R. X. 3715-16), to-wit:

"Q. (By Miss Weyand) Did you ever work, on a transfer slip, in a section other than your regular section—the transfer slip I have reference to—

Mr. Hogsett (Interrupting): Objected to on the same ground, as not proper cross-examination in surrebuttal.

Trial Examiner Batten: You may answer.

287.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following [fol. 299] excerpts from the transcript of the Record at pages 6731-2-3 (R. X. 3716-3717), to-wit:

"Mr. Hogsett: On page 6675 of the record yesterday, while Mrs. ~~Stevens~~ was on the stand, I made a verbal offer of proof in respect to the amount of dues of the International—

.....

"I offer to prove by the witness May Stevens that the amount of regular dues of the International Ladies' Garment Workers' Union at the time of her membership was 35c a week, which, for 52 weeks a year would be \$18.20 a year, and that in addition to that there were two regular assessments, one of \$1 per year as a death benefit assessment, and the second an assessment of \$1 a year as a fund in the Work Labor Movement as a whole. That is all.

Mr. Langsdale: The offer is objected to as immaterial, doesn't tend to prove or disprove any issue in this case. It is certainly immaterial, unless they prove what they got for the 35c a week, and how little the Donnelly Garment Workers' Union got for their 25c a month.

Trial Examiner Batten: I will reject the offer, because my recollection is that I rejected your tentative offer."

(a) Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record relating to the testimony of witness Mrs. Reece, to-wit: (pp. 6742-3-4) (R. X. 3720-3721):

“Q. (By Mr. Tyler) Mrs. Reece, did you ever hear any instructor direct the girls or the workers in her section to attend union meetings in a group?

A. No, I did not.

Trial Examiner Batten: I think I ruled on that question with the prior witness. I do not consider it proper.

Mr. Tyler: I expect to ask two more questions on the same line. Shall I make an offer of proof first, or—

Trial Examiner Batten: No. Ask the questions, Mr. Tyler.

Q. Did you ever see any instructor in the Donnelly plant gather the girls in her section together and take them to any union meeting?

[fol. 300] A. No.

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: I make the same ruling with respect to that question, Mr. Tyler.

Mr. Langsdale: And I ask that the answer be stricken.

Trial Examiner Batten: I will wait until Mr. Tyler makes his offer of proof.

Proceed Mr. Tyler.

Q. (By Mr. Tyler) What was the custom in the Donnelly factory as to whether the employees went to union meetings with anybody they pleased or not?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: The same ruling I made to the other two questions, Mr. Tyler.

.....

Mr. Tyler: \* \* \* I offer to prove by this witness that if she were allowed to answer the questions which the Examiner has sustained objections to, she would testify that she never heard of any instructor direct the girls in her section to attend any union meeting in a group; that she never saw any instructor gather the girls together and take them to a union meeting; and that the custom at the Donnelly plant was that employees would attend union meetings with whomever they pleased, without obstruction or pressure or limitation.

Mr. Langsdale: I object to the offer for all of the reasons given against the question.

Trial Examiner Batten: The offer is rejected."

(b) Petitioner assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers by the witness Mrs. Hutchinson as set forth in the transcript of the record at pages 6751-52-53 (R. X. 3725-3726).

(c) Petitioner further assigns as error, the rulings, action and comments of the trial examiner made with reference [fol. 301] to similar questions and answers in the transcript of the record at pages 6789-90-91 (R. X. 3734-35-36).

(d) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Lora Fries, as set forth in the transcript of the record at pages 6811-12-13-14 (R. X. 3739-3740).

(e) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Lillie Reynolds, as set forth in the transcript of the record at pages 6824-25-26 (R. X. 3743-44).

(f) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Alvin Reifel, as set forth in the transcript of the record at page 6941 (R. X. 3773).

(g) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness, Elizabeth Barrett, as set forth in the transcript of the record at pages 6947-48-49 (R. X. 3774-3775).

(h) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Marjorie Green, as set forth in the transcript of the record at pages 6962-63-64 (R. X. 3777-3778).

[fol. 302]

289.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6762-63-64-66-67 (R. 3727-28-29-30).

"Mr. Ingraham: Mr. Examiner, I intended to state before I put this witness on the stand that I understood you to say that you limited respondent to three witnesses in connection with the matters that Etta Dorsey testified about.

Trial Examiner Batten: Well, is that the way you understand it?

Mr. Ingraham: I understood you to say that very positively.

Trial Examiner: Well, I think you are correct.

Mr. Langsdale: Well, I understand the limitation would be with reference to all matters inquired about this morning in connection with Etta Dorsey's testimony.

Trial Examiner Batten: My understanding of what I intended to do was limit you to three witnesses from that section with respect to the matters that you asked the witnesses about. Now, is there any difference between that and your understanding?

Mr. Ingraham: No, that is what I understood you to say. Of course, we will prepare an offer of proof.

Trial Examiner Batten: If you have an offer, you make it right now, Mr. Ingraham.

.....

Mr. Ingraham: Respondent offers to prove by Ruth Strandt, Ida Barton, Leone Sams, Beatrice Face, Goldie Sprague, Nina Gilardi, Grace Pardun, Anne Belan, Lulu Gordon, Ruth Chaney Miller, Ida Mauk, Estel Rothgeb, Ora Dull, Lela Stevens, Hazel Higgins, Violet Hawkins, Anne Elizabeth Stone, and each of them, that if permitted to testify they would testify that they were employed during the months of March, April, and May, 1937, by the Donnelly Garment Company, and during said time worked in Section 518; that during all of said time Etta Dorsey was their instructor and they had no other instructor during said time except Etta Dorsey; that Etta Dorsey did not inform them or state to them that they would be paid by the Donnelly Garment Company for the time spent at the meeting of March 18, 1937, where Mrs. Reed spoke; and they were not, in fact, paid for the time spent at said meeting; that Etta Dorsey did not inform them or state to them that they would be paid for the time spent at the meeting of April 27, 1937, and they, in fact, were not paid for the time spent at that meeting; that Etta Dorsey did not state to them that they would be paid for time [fol. 303] spent at union meetings, and they, in fact, were not paid for time spent at any union meetings; that they did not know of any employee being paid for time spent at any said union meetings, or the meeting of March 18, April 27, or any other meeting; that they did not attend any meetings during said time and return to work.

Mr. Langsdale: Union meetings, you mean?

Mr. Ingraham: Well, any of the aforesaid meetings, and return to work; that in the event they did not intend to come to work they would notify the employment office, and would not notify their instructor; that the employment office would transfer operators in their section and it was not done by the instructor.

.....

I want to add to the offer of proof that each of said stated persons will further testify that they never received a pay check with the section number on it that was



not the correct section number in which said person worked and that each of said persons' pay checks had on it Section number 518 during the months of March, April and May of 1937.

.....

° Trial Examiner Batten: Well, my understanding is that the offer of proof is in line with the testimony of the three witnesses, and taking into consideration the objections offered by the various attorneys, representing the parties, and upon that basis I reject the offer."

for the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the trial examiner and Board, and in view of the contentions of the Board and ILGWU in the further hearing, and unless the trial examiner was satisfied that the three witnesses who had already testified to such matters had established same, it was prejudicial and unfair to petitioner to limit such testimony to three witnesses, and in any event petitioner was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the trial examiner denied to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 304]

290.

Petitioner assigns as error the ruling, action and comment of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6784-85 (R. X. 3733), to-wit:

"Q. Do you recall ever being paid for any time you spent at any Loyalty League meetings?

A. No.

.....

/ Trial Examiner Batten: —that doesn't change the situation at all, because this morning I had no idea of going into all of these generalities, which I don't think carry a great deal of weight, anyway."

291.

Petitioner assigns as error the rulings and action of the trial examiner and the action of the Board in affirming same in receiving in evidence over petitioner's objections the testimony and each and every part thereof offered by the Board and ILGWU from the old NRA case #160 and from the Judge Miller case No. 2924, and in overruling petitioner's objections thereto.

292.

Petitioner assigns as error the several findings, conclusions and recommendations of the trial examiner in the Intermediate Report and the Board's affirmance thereof for the reason that same thwart and violate the prime purposes and provisions of the National Labor Relations Act.

[fol. 305]

293.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 6834-35-36-37-38 (R.X. 3744-3745), to-wit:-

"Mr. Ingraham: Mr. Examiner, does the same ruling apply to section 413 as to section 518?

"Trial Examiner Batten: Exactly.

"Mr. Ingraham: Then respondent makes an offer of proof that if Marie Richardson, Hazel Hardman, Emilea Raines, Grace Short Kunther, Eva Liberman, Edna Tattershall, Louis Kesinger, Millie Ihle, Katherine Sutulovick, Ruth Putnam, Emma Hansen, Edith Alexander, Lillie Reynolds, Bertha Taylor, Lucille Wilkey, Anna Spahr, Perl Hall, Nellie States, Ruth McBride, Lorene Johnson, Beulah Perkins, Mildred Brooks Ballard, Opal Richardson, Dorothy Dietz Sharp, Gladys Rudd, were permitted to testify, they would testify as follows;

"That they were employed at the Donnelly Garment Company during the months of March, April, and May, 1937; that their instructor was Lola Skeens during said period; that each attended the meeting of March 18, 1937;

that Lola Skeens did not notify them or any of them that said meeting was to be held; that Lola Skeens did not go up the north side of the section notifying the girls of the meeting; that Lola Skeens did not inform the girls that they were to be paid for the time spent at that meeting; that they were not paid for the time spent at that meeting; that each of said persons attended the meeting of April 27, at which time the Donnelly Garment Workers' Union was formed; that Lola Skeens did not notify any of them of said meeting; that Lola Skeens did not go up the north side of the section, telling the girls of the meeting, and that the thread girl did not go up the south side of the section, telling the girls of the meeting; that Lola Skeens did not tell the girls that they were to be paid for the time spent at said meeting; and that none of the persons named received any pay for the time spent at said meeting; that they attended union meetings, and were never notified by Lola Skeens that said meetings were to be held, and were not informed by Lola Skeens that they would be paid for the time spent at said meetings, or any of them; and they were not, in fact, paid for any time spent at any union meeting; that Lola Skeens did not notify them of any Loyalty League meetings, and they were never paid for any time spent at any Loyalty League meetings; that all the meetings above referred to were held after working hours.

[fol. 306] "Trial Examiner Batten: Now, aren't you including two things there that you haven't asked this witness thus far, Mr. Ingraham.

"Mr. Ingraham: What are those two things?

"Trial Examiner Batten: Well, you just said, 'All the meetings were held after working hours,' and you said they would testify that they were not paid for any Loyalty League meetings. I don't recall that you asked this witness that.

"Mr. Ingraham: I think I did, and I think I asked at least one of these witnesses if meetings were held after working hours.

.....

"Trial Examiner Batten: I thought you were making me an offer now on the basis of those three last witnesses.

"Mr. Ingraham: I am, and I thought I asked that question.

.....

"Trial Examiner Batten: \* \* \*. I will ask you if it is your intent that the offer of proof cover the testimony covered by the three prior witnesses?

"Now, if that is your intention, then I am willing to accept the offer of proof.

"Mr. Ingraham: All right.

"Trial Examiner Batten: I am perfectly willing the offer of proof be just as all-inclusive as the last three witnesses.

.....

"Mr. Ingraham: That Lola Skeens did not turn the power off for the purpose of sending the employees in section 413 to any of the meetings referred to.

.....

"Trial Examiner Batten: Well, the offer of proof will be rejected on the same grounds as previously stated, for the same reasons, and I will allow the same objections, if there were any."

For the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the Trial Examiner and Board, and in view of the contentions of the Board and ILGWU in the further hearing and unless the Trial Examiner was satisfied that the three witnesses who had [fol. 307] already testified to such matters had established same, it was prejudicial and unfair to petitioner to limit such testimony to three witnesses, and in any event petitioner was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the Trial Examiner denied to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(a) Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action

in affirming same) made with reference to the examination of the witness Fred Brown as set forth in the following excerpts from the transcript of the record at pages 6915, 6916, to-wit:

"Q. Do you know whether the employees obtained any benefits—additional rights under that contract that they didn't have before?

"A. Yes, they did. \* \* \*

"Trial Examiner Batten: I don't think, Mr. Tyler, I want to open up that matter now, so I will ask you not to. If you have an offer of proof on it that you want to make, all right.

"Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether benefits were derived from the contract in the spring of 1937 and what the benefits were, would —

"Mr. Langsdale: Which contract?

"Mr. Tyler: I think there is only one.

"Mr. Langsdale: Two.

"Mr. Tyler: All right. The contract of May 27, 1937, as supplemented by the wage agreement of June 22, 1937.

"— would testify that he does not remember in detail all of such benefits, but that he is positive that some of the minimum— that the minimum pay before the contract was \$15.00 a week and that by reason of the contract the minimum for anyone was raised to \$16.50 a week, and that the [fol. 308] payments made to certain individuals, regardless of contract rights, were increased by reason of the contract, and that the time allowed for vacations with pay to certain employees was increased over the custom, as well as being established as a legal right which had not existed before, and that there were other benefits, although he may not recall them in detail.

"Mr. Langsdale: The offer is objected to as not proper surrebuttal.

"Trial Examiner Batten: I will sustain the objection. I don't think it is proper."



(b) Petitioner further assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) made with reference to similar questions and answer in the examination of witness Jack McConaughy as set forth in the transcript of the record at pages 6921, 6922.

(c) Petitioner further assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) made with reference to similar questions and answers in the examination of the witness Mabel Riggs as set forth in the transcript of the record at pages 6933, 6934 (R.X. 3770-3771).

## 295.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 6928, made with reference to the witness Jack McConaughy, to-wit:

"Mr. Langsdale: I do offer to prove by this witness, should he be permitted to testify on this, his answer would be that the union meetings were attended by the employees going to the meeting section by section, for the reason that the elevator service was limited to two elevators, with a capacity of 15 each, and that, therefore, it would be utterly impossible for all of the employees to reach the meeting at the same time.

[fol. 309] "Mr. Hogsett: We had no objection to his inquiring of the witness whether that is so or not—whether that is the witness' testimony or Mr. Langsdale's improvisation.

"Mr. Tyler: I object to the offer of proof because, as a matter of fact, the witness' testimony would not be to that effect. The witness is here, and if anybody wants to settle it, the opportunity is apparent.

"Trial Examiner Batten: I don't think I am going to start out, at this stage of the proceedings, to test out whether the offers of proof that have been offered so far are justified."

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts of the transcript of the record at pages 6967, 6968, 6969, 6970 (R.X. 3779-3780).

"Trial Examiner Batten: Mr. Tyler, I am still more convinced that any more witnesses along this line—it isn't only cumulative but it is repetitious, especially if they testified in the prior hearing, as was indicated this morning. If you have witnesses you want to present who will testify to specific matters or other matters, you may produce them.

"Mr. Tyler: I have one witness who will testify to an entirely separate state of facts. But I except to Your Honor's ruling, and I would like to make an offer of proof.

"Trial Examiner Batten: You may do so.

"Mr. Tyler: I offer to prove by the following witnesses: Rose Todd, Hobart Atherton —

"Mr. Langsdale: Just a moment. I wish the Examiner would permit him to bring Rose Todd here and put her on the stand.

"Trial Examiner Batten: Let's proceed.

"Mr. Tyler: (Continuing) —Hobart Atherton, Walter Higgins, Mary McClellan, and Finland Rife, that if permitted to testify they would testify that they were members of the Donnelly Garment Workers' Union between April 27, 1937, and July 15, 1939; and that at some part of that time they were members of the executive committee of the Donnelly Garment Workers' Union; and that at no time and on no occasion during that period were they ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending Donnelly Garment Workers' Union meetings or meetings of the executive committee of the Donnelly Garment Workers' Union; and that they had no knowledge of and never saw any instructor gather the employees in her section together and take them as a group to any meeting of the Donnelly

Garment Workers' Union; and that the employees were free to attend such meetings with whom and in such manner as they chose, without any interference, dictation or pressure from the employer; and that the women employees in the Donnelly plant frequently attended meetings of the Donnelly Garment Workers' Union held after working hours while still wearing their work aprons; and that they were never paid for the time spent at any meetings of either the Donnelly Garment Workers' Union or the executive committee of the Donnelly Garment Workers' Union by the Donnelly Garment Company or the Donnelly Garment Sales Company.

\*\*\*\*\*

"Trial Examiner Batten: I will reject the offer for the reasons I have previously stated.

"Mr. Hogsett: Respondent joins in the offer and respectfully excepts to the ruling of the Examiner.

"Trial Examiner Batten: Of course, understand, my rejection of the offer, under those circumstances, would be also applicable to you."

for the reasons among others that said line of testimony was highly important to the issues herein involved in view of the former findings and conclusions of the Trial Examiner and Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing and said rulings and actions were unfair and highly prejudicial to petitioner and intervenor unless the Trial Examiner was convinced that the facts testified to by the witnesses already called sufficiently established such facts so as to require findings in accordance therewith and even in such event, petitioner and intervenor were entitled to have further witnesses called and testify with reference to said matters, for the consideration of the Board and Court, and the refusal of the Trial Examiner to permit intervenor to call further witnesses for such purpose denied to petitioner and intervenor a fair trial and deprived them of due process of law in contravention to the Fifth Amendment to the Constitution of the United States.

297.

Petitioner assigns as error each and all the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) contained or referred to in the foregoing assignments of error numbered 196 to 296 inclusive, for each and all of the reasons therein set forth or referred to and because same show the bias and non-judicial attitude of the Trial Examiner and his prejudgment of the issues herein against petitioner and because same are unfair and prejudicial to petitioner and deny to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States. In answer to some of the questions objected to, answers favorable to the petitioner were given and petitioner does not assign as error said favorable answers but does assign as error the rulings as showing the bias and non-judicial attitude of the Trial Examiner.

298.

The erroneous rulings, findings and conclusions of the Trial Examiner throughout the record and in the Intermediate Report are so numerous as to prevent setting same forth in detail in these assignments of error, but petitioner by the omission to quote or refer to any of the adverse findings or conclusions of the Trial Examiner in his Intermediate Report or the omission to assign as error many of the numerous rulings of the Trial Examiner throughout the hearing, does not mean that petitioner is [fol. 312] admitting the truth or correctness of any of said adverse findings or conclusions or that the correctness of said rulings, and petitioner hereby assigns as error each and all adverse rulings, findings or conclusions of the Trial Examiner (and the Board's adoption and affirmance thereof.)

299.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) rejecting petitioner's offer of proof and protest against the ruling of the Examiner made August 19, 1942, contained in Board's exhibit No. 1-SSSSS, as appears from page 6981 of the transcript of the record herein, for the reasons among others that the testimony therein re-

ferred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I.L.G.W.U. relating to the same subject matter as that sought to be proved by said witness Wave Tobin and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing herein, and said ruling and action in rejecting said offer of proof and in refusing to permit petitioner to examine said Wave Tobin with reference to said matters and with reference to such other pertinent matters as would have been elicited in the course of such examination, and in denying to petitioner the right to place its witnesses on the stand in the order it desired, and denying to petitioner the right to continue and complete the examination of said Wave Tobin before proceeding to the introduction of the evidence of [fol. 313] other witnesses, were highly unfair and prejudicial to petitioner and there was no basis for the exercise of any sound discretion of the Trial Examiner in refusing to receive such testimony and the denial thereof and the rejection of said offer of proof deprived petitioner of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

## 300.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6981 of the transcript of the record herein denying petitioner's reoffer of certain offers of proof and petitioner's reoffer of Petitioner's Exhibit No. 2 (rejected) and petitioner's reoffer of Intervener's Exhibit No. 20 (rejected) and each of same, for each and all the reasons and grounds set forth in the foregoing assignment of error No. 299. This refers to all the offers of proof made by petitioner in the former hearing of this matter before the Trial Examiner, including Board's Exhibit No. 1-0000 and Board's Exhibits Nos. 1-JJJJ, 1-NNNN, 1-QQQQ, 1-XXXX, and intervenor's offer of proof Board's Exhibit No. 1-RRRR, and each of same.



301.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on page 6982 of the record herein rejecting and denying petitioner's supplemental offer of proof designated as Board's Exhibit No. 1-TTTTTT, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 299 herein.

[fol. 314]

302.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on page 6982 of the record herein, rejecting and denying petitioner's offer of proof designated as Board's Exhibit No. 1-UUUUU for the reasons among others that the testimony therein referred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I. L. G. W. U. relating to the same subject matters referred to in said offer and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I. L. G. W. U. in the further hearing herein, and the rejection of said offer of proof and the denial to petitioner to adduce the evidence therein referred to was unfair and highly prejudicial to petitioner and there was no basis for the exercise of any sound discretion on the part of the Trial Examiner in refusing to receive said testimony and said rulings deprived petitioner of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

303.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the record herein rejecting and denying petitioner's offer of proof designated as Board's Exhibit No. 1-VVVVV, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

[fol. 315]

304.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the transcript of the record herein (R. X. 3783), rejecting and denying petitioner's offer of proof designated as Board's Exhibit 1-WWWWW, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302.

305.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the transcript of the record herein (R. X. 3783), rejecting and denying intervenor's offer of proof designated as Board's Exhibit 1-XXXXX, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

306.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth at page 6983 of the transcript of the record herein (R. X. 3783), rejecting and denying petitioner's offers of proof, and each of same, of witnesses employed or formerly employed in Sections 518 and 413 of the plant of the Donnelly Garment Company, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

307.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 6984, 6985 (R. X. 3784), to-wit:

[fol. 316] "Trial Examiner Batten: \* \* \* Yesterday there was a witness, Mary Copowycz, on the stand, and during the cross-examination of Mr. Tyler, which begins at page 6879, the question at line 2, the question at line 6, and the answers thereto, the question at line 4, page 6882, and the answer, and the question at line 8, and the answer—

those questions and answers are stricken, in accordance with my prior ruling on those other witnesses. Those are the questions which I find are the same as the others, Mr. Tyler. The answers may stand as an offer of proof."

308.

Petitioner assigns as error the findings of the Trial Examiner (and the Board's action in affirming same) that check-off cards were distributed by the petitioner to its employees for their signature and the finding of the Trial Examiner that Rose Todd went to the petitioner's plant at St. Joseph, Missouri to organize the employees in that factory, and was absent from her employment about a half of day without salary deduction therefor, and assigns as error the findings of the Trial Examiner that instructors regard themselves as supervisors and that they exercise supervisory and economic control over the operators and are regarded by the operators as supervisory employees, and that they are responsible to Baty for the quantity and quality of work in their respective sections, and that Baty never gave them any instructions or directions or conferred with them about their work, and assigns as error the findings of the Trial Examiner as to what payrolls Rose Todd and other persons were carried on, and the findings of the Trial Examiner to the effect that business of the DGWU was conducted during business hours, as not being supported by the evidence.

[fol. 317]

309.

Petitioner assigns as error the repeated rulings of the Trial Examiner (and the Board's action in affirming same) permitting the Board and ILGWU to adduce evidence relating to various subjects and relating to various periods of time; and his ruling refusing to permit petitioner and Intervener to introduce countervailing evidence relating to said subjects and relating to said periods of time.

310.

Petitioner assigns as error the several rulings of the Trial Examiner (and the Board's action in affirming same) whereby he refused to hear further witnesses on the part of petitioner and intervener as to various issues involved

without signifying that the matters contended for by petitioner and testified to by petitioner's and intervenor's witnesses had been sufficiently established and/or without signifying as to what if any controverted issues were not sufficiently established by petitioner's or intervenor's witnesses.

## 311.

Petitioner assigns as error the rulings of the Trial Examiner (and the board's action in affirming same) in refusing to receive testimony from petitioner or intervenor as to matters occurring after July 15, 1939, irrespective of whether such matters had any bearing upon the issues involved herein, and irrespective of whether same tended to disprove the charges against petitioner.

## 312.

Petitioner assigns as error the rulings of the Trial Examiner (and the Board's action in affirming same) [fol. 318] requiring petitioner to submit offers of proof as to the testimony of its various witnesses including Wave Tobin, instead of permitting petitioner to call said witnesses to the stand and adduce material testimony from them by oral examination, for the reason that it is well known that the testimony of a witness may be more fully and accurately developed by examination on the stand than by statements in an offer of proof, especially when the witness is an adverse witness, as was Wave Tobin, and counsel had not the opportunity of ascertaining fully the extent of her testimony, and for the further reason that said ruling is unfair and prejudicial to petitioner and demonstrates the bias of the Trial Examiner that he did not require the Board to submit offers of proof as to the testimony of Rose Todd and various other witnesses before calling them to the stand.

## 312-a.

Petitioner assigns as error each and all the rulings, actions and comments of the Trial Examiner (and the action of the Board in affirming and adopting same) set forth or referred to in the foregoing points numbered 34 to 312 inclusive, for each and all the reasons and objections



set forth in those points or made by petitioner or intervenor at the time of said rulings, and for the further reasons that same were erroneous and prejudicial to petitioner and that by said rulings petitioner was excluded from adducing competent and material evidence which should have been received and considered by the Trial Examiner and Board in arriving at their findings and conclusions, and because by said rulings the Board and I. L. G. W. U. were permitted to adduce a mass of incompetent, irrelevant and immaterial evidence, which should [fol. 319] not have been received or considered by the Trial Examiner or Board but upon which the Trial Examiner and Board based their findings and conclusions and the order herein by reason of all of which petitioner has been denied a fair trial.

312-b.

● The Board erred in its order, in paragraph 1 (b), ordering petitioner to cease and desist "from giving effect to its check-off agreement with" the Donnelly Garment Workers' Union, and in paragraph 2 (b) ordering petitioner to reimburse all of its employees for all dues and assessments, if any, "which it has deducted from their wages on behalf of Donnelly Garment Workers' Union", for the reason that petitioner has had no check-off arrangement with the Donnelly Garment Workers' Union and has not deducted any dues or assessments from its employees' wages "on behalf of Donnelly Garment Workers' Union", but such dues to the Donnelly Garment Workers' Union as have been deducted from the wages of petitioner's employees have been deducted and paid to the Donnelly Garment Workers' Union for them individually and at their individual request in writing and the Board's orders in these respects are not supported by the evidence and are contrary to law.

Petitioner further assigns as erroneous the said orders for the reason that the complaint, as amended, did not charge or notify petitioner that the Board sought to impose such action on petitioner and petitioner was not given fair or reasonable notice thereof and therefore was [fol. 320] not given adequate opportunity to introduce evidence upon such issue, and was denied a fair



trial upon such issue and such orders should be set aside for said reason as well as because they are not supported by the evidence and are not conducive to effectuating the purposes of the National Labor Relations Act, are unreasonable and arbitrary under the facts and circumstances, are contrary to the provisions of the Act and beyond the power of the Board.

[fol. 321]

313.

The trial examiner and the Board erred in failing and refusing to consider, find and report that this proceeding be dismissed, in whole or in part, for each and all of the reasons specified in Paragraphs 1 to 10 inclusive of Part A of petitioner's Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in petitioner's Answer to Amended Complaint, Exhibit No. 1-LLLL.

314.

The trial examiner and the Board erred in failing and refusing to consider, find and report that this proceeding be dismissed for each and all of the reasons specified in Part B of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Petitioner's Answer to Amended Complaint, Exhibit No. 1-LLLL.

315.

The trial examiner and the Board erred in failing and refusing to investigate, by secret election or otherwise, the true representatives of petitioner's employees and so report and certify the same in accordance with the petition contained in Part C of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in petitioner's Answer to Amend Complaint, Exhibit No. 1-LLLL.

316.

The trial examiner and the Board erred in making the ruling contained in Paragraph 2 of Board's Exhibit No. VYY, overruling petitioner's motion, Exhibit 1-SSS, to dismiss the Complaint as amended.

[fol. 322]

317.

The trial examiner and the Board erred in making the ruling contained in Paragraph 3 of Board's Exhibit

1-YYY, overruling petitioner's motion, Exhibit 1-TTT, to strike from the complaint as amended, Paragraph 5, subparagraph C.

318.

The trial examiner and the Board erred in making the ruling contained in Paragraph 5 of Board's Exhibit 1-YYY, overruling petitioner's motion, Exhibit 1-VVV, to make the complaint as amended more definite and certain in each and all of the respects specified in said ruling.

319.

The trial examiner and the Board erred in making the ruling contained in Paragraph 6 of Board's Exhibit 1-YYY, ordering petitioner to submit a written statement of the evidence it would offer to prove the parts of the Answer set forth in the motion to strike of the International Ladies' Garment Workers' Union, Exhibit 1-QQQ.

320.

The trial examiner and Board erred in making the ruling contained in Paragraph 7 of Board's Exhibit 1-YYY, denying and refusing to consider petitioner's Petition for Investigation and Certification of Representatives pursuant to Section 9 (c) of the National Labor Relations Act, part C of petitioner's Answer, Exhibit 1-JJJ.

321.

The trial examiner and Board erred in denying petitioner's motion (Exhibit 1-PPP) to dismiss the amended complaint and in denying the intervenor's motion to dismiss (Exhibit 1-LLL).

[fol. 323]

322.

The trial examiner and Board erred in denying petitioner's motion (Exhibit 1-AAAA) to strike portions of Paragraph 11 of the Amended Complaint, which was denied as to all parts except subparagraphs (o) and (p).

323.

The trial examiner and Board erred in denying intervenor's applications for an election and continuance. (Tr. Rec. pp. 130, 131, 134) (R. I. 6, 7).

324.

The trial examiner and Board erred in refusing to consider the petitions for investigation and certification (Exhibits 1-NNN and 1-000) filed by intervenor herein.

325.

The trial examiner and Board erred in its ruling and action contained in paragraph 2 (a) of Board's Exhibit 1-SSSS receiving in evidence Board's Exhibit 28, for the reason that said exhibit and evidence is irrelevant and immaterial to any issue herein and does not tend to prove any charge in the complaint; for the further reason that said exhibit is incomplete and covers only a period of three months' time and does not include earnings of piece workers, bundle boys, etc.

326.

The trial examiner and Board erred in its ruling and action contained in paragraph 2 (d) of Board's Exhibit 1-SSSS refusing petitioner's offer of proof (Exhibit 1-XXXX).

[fol. 324]

327.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (e) of Board's Exhibit 1-SSSS sustaining motion (Exhibit 1-QQQQ) of the International Ladies' Garment Workers' Union to strike certain parts of petitioner's Answer.

328.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS refusing the petitioner's offer of proof (Exhibit 1-NNNN) as to Part B of the Answer.

329.

The trial examiner and Board erred in the ruling and action contained in paragraph 2 (g) of Board's Exhibit 1-SSSS refusing petitioner's offer of proof (Exhibit 1-JJJJ).

330.

The trial examiner and Board erred in the ruling and action set forth in Paragraph 2 (h) of Board's Exhibit

1-SSSS refusing respondent's offer of proof (Exhibit 1-0000).

331.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (i) of Board's Exhibit 1-SSSS refusing intervenor's offer of proof (Exhibit 1-RRRR).

332.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS, denying petitioner's request in Part A of its Answer for dismissal of the Complaint.

[fol. 325]

333.

The trial examiner and the Board erred in failing and refusing to accept or consider petitioner's offer of proof (Board's Exhibit 1-QQQQ) as to paragraph 2, Section A, of Petitioner's Answer.

334.

The trial examiner and Board erred in failing and refusing to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part A of Petitioner's Answer herein.

335.

The trial examiner and Board erred in failing and refusing to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part B of petitioner's Answer herein.

336.

The trial examiner and Board erred in making the statement in paragraph 2 (f) of Board's Exhibit 1-SSSS that the petitioner stated in the record that no offer of proof would be made on Part A of the Answer, for the reason that said statement overlooks petitioner's offer of proof (Board's Exhibit 1-QQQQ) as to Part A of its Answer.

337.

The trial examiner and Board erred in making the ruling contained in paragraphs 2 (j), 2 (k) and 2 (m) of Board's Exhibit 1-SSSS in so far as the effect or consideration of

the evidence contained in petitioner's NRA-JMC Exhibit 3 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings [fol. 326] heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Petitioner further assigns as error said part of said ruling because the same is so vague and uncertain as not to apprise petitioner as to what parts of the evidence in said NRA-JMC Exhibit 3 the trial examiner by said ruling considers or excludes or refuses to consider. Petitioner is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Petitioner further assigns as error said part of said ruling because the same constitutes a rejection, refusal or failure to consider any part of the testimony of Elizabeth Reeves contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Petitioner is unable to make this assignment of error more specific because of the vagueness and uncertainty of said ruling of the trial examiner.)

(c) Petitioner further assigns as error said quoted part of said ruling because the same constitutes a rejection, refusal or failure to consider any part of the testimony of witnesses Bachofer, Reeves, Keyes, Stites, Rosenfield, Gordon, Ruden, Dowdy, Kilby, Sprofera, Ball, Jeters, Rickett, Cauthen, Smith, Redish, Shartzter, Warren, Ingraham, Hull, Perlstein, Fry, Dubinsky, Tobin, Mrs. Reed, Allison, Atchison, Wales, Owen, Rutherford, Reider, Lutz, Patton, Neimoyer, Perkins, Richards, Stroup, White, or any of them, contained in said NRA-JMC Exhibit 3 upon any of [fol. 327] the issues or "subjects" referred to in said ruling. (Petitioner is unable to make this assignment of error more specific because of the vagueness and uncertainty of said ruling.)

### 338.

The trial examiner and Board erred in the action and ruling on October 2, 1939, denying motion of petitioner herein, entitled "Motion to Clarify Rulings of Trial Ex-



aminer," filed with the trial examiner on or about September 6, 1939; and also in the denial of each and every the several motions and requests for clarification set forth in said motion.

The trial examiner and the Board also erred in the ruling and action denying a like Motion for Clarification filed by intervenor herein.

## 339.

The trial examiner and Board erred in the ruling and action on October 2, 1939, denying Motion of petitioner herein, filed with the trial examiner on or about September 12, 1939, for leave to file herein and make a part of the record, a certain petition for investigation and certification of representatives (which petitioner had attempted to file with the National Labor Relations Board), and copy of the letter of the Acting Regional Director for the Seventeenth Region to Donnelly Garment Company, dated September 8, 1939, refusing to file and docket said petition.

## 340.

The trial examiner and Board erred for the reason that the conclusions, recommendations, findings, contained [fol. 328] in the Intermediate Report adverse to petitioner, are based on purported evidence which is incompetent and irrelevant, and such findings, conclusions and recommendations are arbitrary, capricious, oppressive and contrary to the law and the evidence.

## 341.

The trial examiner and Board erred for the reason that the trial examiner consistently disregarded the obligation to weigh and consider all the evidence, and ignored the legal doctrine that the burden of proof was cast upon the Board to establish the charges as alleged by a fair preponderance of the evidence.

## 342.

The trial examiner and Board erred for the reason that the findings of fact, adverse to petitioner, and the conclusions and recommendations purported to be based thereon, are based wholly or substantially upon alleged acts occur-

ring prior to July 5, 1935, with the result that petitioner is convicted of violation of the National Labor Relations Act by reason of alleged acts occurring prior to the effective date thereof; and, which, if they occurred, were in all respects lawful and innocent.

## 343.

The trial examiner and Board erred for the reason that the trial examiner held petitioner to be bound by the alleged acts, omissions and declarations of employees, although no authority was shown for such alleged acts, omissions or declarations and the latter were not shown to be in the course or within the scope of any employment by [fol. 329] respondent and the undisputed evidence negatived such authority and such course and scope.

## 344.

The trial examiner and Board erred for the reason that the trial examiner held petitioner to be bound by the alleged acts, omissions and declarations of instructors although the undisputed evidence disclosed that instructors had no authority to hire, discipline or discharge, were not supervisory employees, and were not authorized to commit the alleged acts, omissions or declaration and the said alleged acts, omissions or declarations were not shown to be in the course of or within the scope of their employment, nor in any way binding upon petitioner.

## 345.

The trial examiner and Board erred because the trial examiner and Board have failed to find and conclude that the petitioner has not dominated or interfered with the formation and administration of the Donnelly Garment Workers' Union and has not contributed support to said Union, and has failed to find and conclude that the petitioner did not discriminate against the International Ladies' Garment Workers' Union or its members or discourage membership therein, and has failed to find and conclude that petitioner did not interfere with, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has failed to find and conclude that the petitioner did not dominate, control, interfere with, or act through the

[fol. 330] Donnelly Loyalty League in any way, and has failed to find and conclude that the Donnelly Garment Workers' Union was not a successor of, or connected with, the Donnelly Loyalty League and that the Donnelly Loyalty League did not dominate or interfere in the formation or administration of the Donnelly Garment Workers' Union, and has failed to find and conclude that petitioner is not guilty of any of the unfair labor practices charged in the Amended Complaint and has failed to dismiss or recommend the dismissal of each and all of said charges against petitioner, and because the trial examiner has failed to find, state or consider material, relevant and uncontradicted facts and evidence favorable to petitioner and pertinent to the findings and conclusions made by the trial examiner, but has based his said findings and conclusions on incompetent and detached portions of the evidence deemed by the examiner to be unfavorable to petitioner, and upon conjecture and improper inferences not warranted by the evidence.

## 346.

The trial examiner and Board erred for the reason that the evidence and offers of proof herein (including the testimony or offered testimony of every member of the Donnelly Garment Workers' Union) show that the Donnelly Garment Workers' Union was formed and joined by one hundred per cent of the working employees of petitioner of their own free will and accord without any influence, domination, coercion or interference by respondent, and that they voluntarily chose said Union and its Executive [fol. 331] Committee to represent them for the purpose of collective bargaining with petitioner and have at all times desired to be so represented, and all the direct evidence was to the effect that none of petitioner's executives or supervisory employees with power to hire, discharge or discipline, attempted to dominate, coerce, restrain or interfere in any way with petitioner's employees in regard to their union membership or affiliations, and the findings and conclusions of the trial examiner that petitioner has violated Sections 8 (1), 8 (2), 8 (3) of the National Labor Relations Act are made in the face of this contradicted showing, and said findings, conclusions and recommendations of the trial examiner are contrary

to the letter and spirit of the National Labor Relations Act in that they deny to petitioner's employees the right to bargain with petitioner through representatives of their own choosing and require the violation by petitioner of the National Labor Relations Act by refusing to bargain with the representatives of a majority of the employees, and said conclusions and recommendations being upheld by the Board, the Board is in the position of violating, and requiring petitioner to violate, both the letter and spirit of the Act.

347.

The trial examiner and Board erred in the findings, conclusions and recommendations, and each of them, because said examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all the petitioner's employees for the purpose of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

348.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 3 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

349.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of the following allegation in Paragraph 4 of the Amended Complaint (Board's Exhibit 1-KKKK): " . . . and its predecessor, Donnelly Loyalty League", is a "labor organization", because said allegation is not proved or supported by the evidence and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

350.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 5, 5 (a) and 5 (b) of the Amended Complaint

(Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

351.

The trial examiner and the Board erred in failing and [fol. 333] refusing to dismiss and/or recommend dismissal of Paragraph 5 (c) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to or are based upon matters purporting to have existed or occurred prior to the effective date of the National Labor Relations Act, which were then not unlawful and from which no inference of unlawful conduct by petitioner after the enactment of said Act may be drawn.

352.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 5 (d), 6 and 7 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

353.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 8, 9 and 10 of the Amended Complaint (Board's Exhibit 1-KKKK).

[fol. 334]

354.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 11 and 11 (a) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.



355.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 11 (b), 11 (c), 11 (e), 11 (f), 11 (l), 11 (m), 11 (q) and 11 (r) of the amended Complaint (Board's Exhibit 1-KKKK) because the allegations therein contained are not proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

356.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of the last paragraph in Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because said allegations are vague and indefinite and constitute the conclusion of the pleader and are in no way supported by the evidence.

357.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 12 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

358.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 13 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

359.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 14, 15, 16 and 17 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the

evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

360.

The trial examiner and Board erred in the ruling and action set forth on Page 130 of the transcript denying petitioner's and intervener's Motions to Dismiss the Complaint.

361.

The trial examiner and Board erred in the ruling and action set forth on Pages 130, 131 of the transcript of the record (R. I. 6), denying the application for an election [fol. 336] made by the intervener, Donnelly Garment Workers' Union, and refusing to entertain in this proceeding a petition for an election.

362.

The trial examiner and Board erred in the ruling and action set forth on Page 194 of the transcript of the record (R. I. 12), denying the motion of the intervener, Donnelly Garment Workers' Union, for a continuance of this proceeding for the purpose of the Board's holding an election to determine the representatives of the majority of the employees of petitioner and until the results of such election are known.

363.

The trial examiner and Board erred in the ruling and action set forth on Page 214 of the transcript of the record (R. I. 13), denying, except as to paragraphs (o) and (p), petitioner's motion (Exhibit 1-ZZZ) to Strike Portions of the Complaint as set forth in said Motion.

364.

The trial examiner and Board erred in the several findings, conclusions and recommendations in the Intermediate Report, for the reason that the evidence is so overwhelmingly contrary to most of said findings and to all

of said conclusions, as to show that the trial examiner either did not consider all the evidence or was so biased and prejudiced against petitioner that he intended to and did make his findings, conclusions and recommendations against petitioner notwithstanding that he knew that same were contrary to the overwhelming weight of the evidence, whereby, in either event, petitioner has been and is denied a fair hearing herein and deprived of its liberty and property without due process of law, in con-[fol. 337] travention of the provisions of the Constitution of the United States.

365.

The Trial Examiner and Board erred in the several findings and conclusions of the trial examiner, for the reason that it is the duty and obligation of the Board to prove its charges by a fair preponderance of the evidence and is the duty of the trial examiner and the board to make findings based on a fair preponderance of the evidence and the trial examiner and the board have violated their duty in this respect and have made essential findings which are not only not supported or proved by a fair preponderance of the evidence but are wholly contrary to the overwhelming weight of the evidence.

366.

The trial examiner and Board erred in their denial of credibility of petitioner's and intervener's witnesses and in their accepting the slightest testimony unfavorable to petitioner or the slightest inferences therefrom, in disregard of the overwhelming evidence offered by petitioner and intervener to the contrary, and refuting each and all of the charges in the Complaint.

367.

The Board erred in entering the decision and order directing petitioner to cease and desist from dominating and interfering with the formation and administration of the Donnelly Garment Workers' Union or any other labor organization of its employees and from contributing financial or other support to any labor organization of its [fol. 338] employees, for the reason that said order is

not based on substantial evidence, valid findings of fact or legal conclusions of law and is wholly contrary thereto; that said order is the result of bias and prejudice and is arbitrary, capricious and unjudicial; that said order is based upon alleged acts which occurred prior to the effective date of the National Labor Relations Act and cannot prove any violation of said Act; that in truth and fact all the credible and competent evidence disclosed that petitioner had never dominated, interfered with or contributed to any labor organization of its employees; and further disclosed that 100% of petitioner's employees, except officers and executives and persons with authority to hire, discipline or discharge, voluntarily formed and maintained the Donnelly Garment Workers' Union without any interference, domination or support of any kind or character on the part of the petitioner or any of its officers or supervisory employees.

## 368

The Board erred in entering the decision and order directing petitioner to cease and desist from giving effect to its contract of May 27, 1937, and the amendments, renewals and supplements thereof and from giving effect to its check off agreement with the DGWU for the reason that said order is not supported or justified by any substantial evidence, valid findings of fact, or legal conclusions of law; is unfair and the result of prejudice and bias and arbitrarily deprives petitioner and its employees of valuable property rights in violation of the Fifth Amendment [fol. 339] to the Constitution of the United States; that said order is based upon alleged acts which occurred prior to the effective date of the National Labor Relations Act and can not prove any violation of said Act. It wholly disregards the undisputed evidence that petitioner and the chosen representatives of 100% of its employees, after full negotiation, entered into said contracts and the same contain higher wages and more favorable terms and conditions of employment than are provided for in any contracts between the ILGWU and other similar garment manufacturers; that there is no agreement between petitioner and the DGWU for a check off and that the petitioner pays out of its employees' wages only such amounts as each employee, in

writing, authorizes and directs. Said order is void and contrary to the plain terms of Sections 1, 8, 5 and 9 (a) of the National Labor Relations Act.

## 369.

The Board erred in entering the decision and order directing petitioner to cease and desist from discouraging membership in the ILGWU or discouraging or encouraging membership in any other labor organization of its employees by discriminating in regard to hire, tenure of employment, or any term or condition of employment, for the reason that said order is not supported or justified by any substantial evidence or any reasonable inferences therefrom and is not based upon any valid findings of fact or legal conclusions of law or any reasonable inferences therefrom, and is partisan, biased and arbitrary and based on conjecture, inference and surmise and contrary to all the credible and competent evidence, and deprives petitioner [fol. 340] of its liberty and property without due process of the law in contravention of the Fifth Amendment to the Constitution of the United States.

## 370.

The Board erred in entering the decision and order directing petitioner to cease and desist from controlling or using the Donnelly Loyalty League to interfere with, restrain or coerce its employees to self-organization, for the reason that it is unsupported and unjustified by any substantial evidence or reasonable inferences therefrom, valid findings of fact or lawful conclusions of law and is contrary to law and all the credible and competent evidence; that it is arbitrary, capricious and oppressive and the result of bias and prejudice; that it relates to matters which occurred prior to the effective date of the National Labor Relations Act and cannot prove a violation of said Act. It wholly disregards the undisputed evidence that said Donnelly Loyalty League is a voluntary social organization of petitioner's employees and that the petitioner did not control or dominate said organization for any purpose.



371.

The Board erred in the decision and order in ordering petitioner to cease and desist from in any "other" manner interfering with, restraining, or coercing its employees in the exercise of their rights, for the reason that such order is outside the pleadings and the scope thereof, that said order is not based on any valid finding or findings of fact, is not supported by any substantial evidence or reasonable inferences therefrom, is contrary to law, is a [fol. 341] nullity and beyond and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board, is too broad in scope and too vague, uncertain, general and indefinite, and is therefore not susceptible lawfully of judicial enforcement as a final order, since the National Labor Relations Board has no power or authority to issue a general order of the character aforesaid and any order issued must be addressed specifically to the act or acts constituting the alleged coercion, interference or restraint which the Board has lawfully found upon substantial evidence to have been committed with the threat of continuing commission at the present time and thereafter, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, constitutes a departure from and is beyond and in excess of the issues made by the pleadings and the evidence, is arbitrary, capricious, oppressive, unjudicial and an abuse of discretion, and for the further reasons set forth in the assignments hereinbefore appearing.

372.

The Board erred in the decision and order in ordering petitioner to withdraw all recognition from and disestablish the DGWU, for the reason that said order is not based on any valid finding or findings of fact, is not supported by substantial competent evidence, is contrary to law, is a nullity and beyond and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board, is too broad in scope and too vague, uncertain, [fol. 342] general and indefinite, and is therefore not susceptible lawfully of judicial enforcement as a final order, since the National Labor Relations Board has

power or authority to issue a general order of the character aforesaid and any order issued must be addressed specifically to the act or acts constituting the alleged coercion, interference or restraint which the Board has lawfully found upon substantial evidence to have been committed with the threat of continuing commission at the present time and thereafter, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is arbitrary, capricious, oppressive, unjudicial, and an abuse of discretion, and for the further reasons set forth in the assignments hereinbefore appearing.

373.

The Board erred in the decision and order aforesaid, in ordering petitioner to reimburse all employees who were members of the DGWU for the dues it has collected from their wages on behalf of said Union, for the reason that it is unsupported by any substantial evidence or reasonable inferences therefrom, by valid findings of fact and legal conclusions of law, is arbitrary, capricious and unjudicial, and the result of bias and prejudice and exceeds the jurisdiction of the Board and is not within the scope of the issues and is contrary to law and deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is contrary to law and is wholly predicated upon conjecture [fol. 343] and surmise and in absolute disregard of the undisputed evidence.

374.

The Board erred in the decision and order aforesaid in directing petitioner immediately to post notices and maintain those notices for a period of sixty (60) consecutive days, to the effect therein stated, for the reason that said order, and each constituent part thereof, is not based upon any valid findings of fact, is not supported by the evidence, is not supported by the substantial evidence, or the substantial competent evidence, is contrary to law, is a departure from the issues under the pleadings, in excess thereof, and not responsive thereto, is beyond and in excess of the jurisdiction of the trial examiner and of the

National Labor Relations Board, purports to require petitioner to confess violations of law which it denies, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is arbitrary, capricious and an abuse of discretion, and for the further reasons set forth in the assignments herein.

## 375.

The Board erred in the decision and order aforesaid in directing petitioner to notify the Regional Director for the Seventeenth Region, in writing, within ten (10) days from the date of the order, what steps the petitioner has taken to comply therewith, for the reason that said order is in excess of the jurisdiction of the National Labor Relations Board and is predicated on the false assumption that petitioner [fol. 344] has violated the provisions of the National Labor Relations Act, is unsupported by any substantial evidence or reasonable inferences therefrom, by valid findings of fact and legal conclusions of law, and for each and all the reasons assigned herein.

## 376.

The Board erred in ordering petitioner to cease and desist from each and all of the matters and acts set forth under Paragraph 1 (a), (b), (c), (d) and (e) of its Order for each and all of the reasons set forth under Point 26, supra.

## 377.

The Board erred in ordering petitioner to take the affirmative action set forth under Paragraph 2 (a), (b), (c) and (d) of its Order for each and all of the reasons set forth under Point 27, supra.

Wherefore, your petitioner respectfully prays that this Court take or resume jurisdiction of this cause; that the National Labor Relations Board be forthwith directed, ordered and required to transmit to this Court the complete certified transcript of the entire proceedings in this cause before said Board; that upon the filing thereof this Court review the evidence, findings of fact, conclusions of

law and the decision and order of said Board and enter a judgment or decree vacating and setting aside said decision and order of the said Board; and that your petitioner have such other and further orders, decrees and relief in the premises as shall be proper and just.

Respectfully submitted,

**DONNELLY GARMENT COMPANY,**

By R. J. Ingraham.

Post Office address:  
1828 Walnut Street,  
Kansas City, Mo.

[fol. 345] State of Missouri,  
County of Jackson.—ss.

R. J. Ingraham, of lawful age, first being duly sworn, states that he is Secretary of the Donnelly Garment Company, petitioner herein; that he is authorized to sign the foregoing petition and to make this affidavit on its behalf; that he knows the contents of said petition and that the facts, statements and allegations therein contained are true to his best knowledge and belief.

**R. J. INGRAHAM.**

Subscribed and sworn to before me this 19th day of June, 1943.

**LAURA BAKER,**  
Notary Public in and for Jackson County, Missouri.

My commission expires July 14, 1945.

**JAMES A REED,**  
**BURR S. STOTTLE,**  
**R. J. INGRAHAM,**  
Attorneys for Petitioner.

(Endorsed): No. 12,641. Petition of Donnelly Garment Company for Review of Order of National Labor Relations Board. Filed in U. S. Circuit Court of Appeals on June 21, 1943.

[fol. 346] Answer Of The National Labor Relations Board To Petition For Review And Request For Enforcement Of An Order Of The National Labor Relations Board.

In The United States Circuit Court Of Appeals  
For The Eighth Circuit.

Donnelly Garment Company, Petitioner,  
No. 12,641 vs.  
National Labor Relations Board, Respondent.

To the Honorable, the Judges of the United States Circuit  
Court of Appeals for the Eighth Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter called the Act, files this answer to the petition for review filed herein and its request for enforcement of the Board's order:

1. The Board admits the allegations contained in paragraph b, appearing on pages 6-7 of the petition to review.

2. The Board denies each and every allegation of error contained in paragraph d, subparagraphs 1-377, appearing on pages 8-344 of the petition to review.

3. With respect to paragraph a, appearing on pages 1-6 of the petition to review, the Board prays reference to the certified record of the proceedings before the Board, filed in this Court, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, findings of fact, conclusions of law, and order of the Board.

[fol. 347]. Wherefore, having answered each and every allegation contained in the petition for review, the Board prays this Honorable Court that said petition be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on June 9, 1943, in proceedings designated on the records of the Board as Case No. C-1382, entitled "In the Matter



of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, party to a contract."

In support of this request for enforcement of its order, the Board respectfully shows as follows:

(a) Petitioner is a Missouri corporation and is engaged in business in the State of Missouri, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of the petition for review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter before the Board, the Board on June 9, 1943, duly stated its findings of fact and conclusions of law, and issued an order directed to petitioner, its officers, agents, successors, and assigns. So much of the aforesaid order, as relates to this proceeding, provides as follows:

#### Order.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

#### 1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers' Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers' Union or any other labor organization of its employees:

[fol. 348] (b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers' Union, and from giving effect to its check-off agreement with said organization;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Donnelly Garment Workers' Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

(b) Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers' Union;

(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof; and (3) that the re-

spondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization;

(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

[fol. 349] (c) On June 9, 1943, the Board's decision and order was duly served upon petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board is certifying and filing with this Court a transcript of the entire supplemental proceedings before the Board, such supplemental record together with the record heretofore certified to this Court in a case designated on this Court's records as Case No. 475 original, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the certified supplemental record to be served upon petitioner; and that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the record and the order made thereon, a decree denying the petition to review and enforcing in whole said order as set forth in paragraph (b) above, and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

#### NATIONAL LABOR RELATIONS BOARD,

By Ernest A. Gross,

Associate General Counsel.

Dated at Washington, D. C., this 2nd day of August, 1943.

[fol. 350] District Of Columbia—ss.:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Re-

lations Board, respondent herein, and that he is authorized to and does make this verification on behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

ERNEST A. GROSS,  
Associate General Counsel.

Subscribed and sworn to before me this 2nd day of August 1943.

JOSEPH W. KULKIS,  
Notary Public, District of Columbia.

My Commission expires April 15, 1947.

(Seal)

(Endorsed): No. 12,641. Answer of the National Labor Relations Board to Petition for Review, etc. Filed in U. S. Circuit Court of Appeals on August 5, 1943.

[fol. 351] Response of Petitioner Donnelly Garment Company to the Board's Application for Enforcement of Order.

In The United States Circuit Court of Appeals In and For the Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,  
No. 12,641 vs.  
National Labor Relations Board, Respondent,

Donnelly Garment Workers' Union, Intervener-Petitioner.

Comes now the above named petitioner and files this its response to the request of the National Labor Relations Board filed herein for enforcement of its order herein (which request for enforcement is set forth on pages 2 to 4 inclusive of its answer to petitioner's petition for review of the Board's order, and for such response petitioner states:

# I.

Petitioner admits that it is a Missouri corporation engaged in business in the State of Missouri within the judicial circuit where the alleged unfair labor practices are

alleged to have occurred and that the Board on June 9, 1943, issued the order as set forth on pages 2 and 3 of the Board's answer and that copy of the Board's decision and order was mailed to and received by petitioner; and petitioner denies each and all the other allegations and statements contained in said request for enforcement.

[fol. 352]

## II.

For further response to said request for enforcement petitioner states that enforcement of said order should not be granted, for each and all of the following reasons, to wit:

(1) Because the order and decision of the Board and the findings of fact and conclusions of the Board on which said order and decision are based are not supported by the evidence.

(2) Because the findings of fact, conclusions, order and decision of the Board are based on incompetent, irrelevant and immaterial evidence.

(3) Because the Board excluded, ignored and refused to consider competent, material and relevant evidence offered by petitioner and intervener Donnelly Garment Workers' Union.

(4) Because the findings of fact, conclusions, order and decision of the Board are, upon the evidence, contrary to law.

(5) Because the findings of fact, conclusions, order and decision of the Board are based on statements and alleged statements and utterances of officers and employees of the petitioner, including statements alleged and found by the Board to have been made by Mrs. Reed at the meeting of employees on March 18, 1937, which statements were not coercive and all of which statements and utterances were within the rights and privileges of free speech guaranteed by the First Amendment to the Constitution of the United States, and if the National Labor Relations Act be so construed (as it is by the Board) as to hold that said statements or utterances constitute a violation of the National Labor Relations Act, such holding or construction would



and does constitute an infringement upon the right of free speech guaranteed by the First Amendment to the Constitution of the United States, and said Act is unconstitutional and said order and decision of the Board are void, by reason thereof.

[fol. 353] (6) Because the matters and things and each of same which the Board orders petitioner to cease and desist from doing, in paragraph 1 of its order, and the affirmative acts and each of same which the Board orders the petitioner to take in paragraph 2 of its order, are in excess and beyond the power and jurisdiction of the Board.

(7) Because the Board and its Trial Examiner were biased and prejudiced against petitioner and intervener Donnelly Garment Workers' Union and denied to petitioner a fair trial herein, and denied to petitioner, due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(8) For and because of each and all the reasons assigned and set forth by petitioner in its petition for review heretofore filed herein, each and all of which reasons and assignments are made a part hereof by reference as fully as though set forth herein in haec verba and are hereby assigned as reasons why the order of the Board herein should not be enforced.

Wherefore petitioner respectfully prays that the Court deny the Board's request of enforcement of its order herein, and grant to petitioner the relief prayed in its petition to review and set aside said order.

JAMES A. REED,  
ROBT. J. INGRAHAM,  
BURR S. STOTTLE,  
Attorneys for Petitioner,  
Donnelly Garment Company.

(Endorsed): No. 12,641. Response of Petitioner Donnelly Garment Company to the Board's Application for Enforcement of Order. Filed in U. S. Circuit Court of Appeals on August 20, 1943.

[fol. 354] (Order of United States Circuit Court of Appeals granting Motion of Donnelly Garment Workers' Union for leave to Intervene, etc.)

United States Circuit Court of Appeals, Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,  
No. 12,641 vs.

National Labor Relations Board, Respondent.

On Petition to Review and Set Aside Order of National Labor Relations Board.

Now on this day comes on to be heard, pursuant to notice, the motion of Donnelly Garment Workers' Union for leave to intervene herein and to file its petition for review of the order of the National Labor Relations Board referred to in the petition of the Donnelly Garment Company for review, and to be heard thereon and proceed thereafter as the rules and orders of this Court may direct. Mr. Frank E. Tyler appeared for movant. Counsel for petitioner not appearing and the Labor Board having indicated by telegram from Mr. Ernest A. Gross (Associate General Counsel for the Board) that it consents to intervention, it is now

Ordered by this Court that leave to intervene be and is hereby granted to the extent the movant may file its brief within the time provided, given, stipulated or extended for the Donnelly Garment Company to serve and file its brief, and to the further extent that counsel for said intervening union may be heard upon oral argument on such conditions and with such time therefor as may be allowed by the Court before which the petition for review by the Company is heard.

June 28, 1943.

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[fol. 355] (Order of United States Circuit Court of Appeals granting leave to International Ladies' Garment Workers' Union to Intervene and to file Brief, etc.)

United States Circuit Court of Appeals, Eighth Circuit.

Donnelly Garment Company, Petitioner,

No. 12,641 vs.

National Labor Relations Board, Respondent.

On application, duly consented to by Petitioner and Respondent, International Ladies' Garment Workers' Union is hereby given leave to intervene and to file brief. The matter of allotting time to said intervener for oral argument will be required to await application to and ruling by the Division of the Court to which the cause is subsequently assigned for hearing.

September 30, 1943.

[fol. 356] (Board's Exhibit No. 1-DD.)

Case No. XVII-C-371.—Date 6/5/39.

Complaint.

United States of America, Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union,

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the Na-

tional Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk and rayon low and medium-priced garments for women.

[fol. 357] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its garments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states:

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act,

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2 (5) of said Act.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this complaint, has dominated and interfered in the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, encourage, and coerce membership into the Donnelly Garment Workers Union on respondent's time and on respondent's property and at respondent's pay and at its expense.

[fol. 358] (b). Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 25, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, depriving its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has



[fol. 359] contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2), above, did discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

11. Respondent, by the acts set forth in paragraphs five (5) and eight (8), above, by interfering with, coercing, intimidating, and threatening its employees to refrain [fol. 360] from becoming members or continuing membership in I. L. G. W. U., by keeping members and meetings of I. L. G. W. U. under surveillance, by openly manifesting bitter hostility to the I. L. G. W. U., by the issuance of written and oral statements designed and calculat-

ed to discourage membership in the I. L. G. W. U., by showing preference and favoritism to the Donnelly Garment Workers Union, and making membership therein a condition of employment, by depriving its employees of the opportunity of joining an organization of their own choosing, by discriminating in the allotment of work of members or sympathizers of the I. L. G. W. U., by questioning employees individually and collectively with regard to their union activity and prejudices, by instigating, allowing or permitting violent demonstrations upon its time and property against certain employees of respondent who were members of the I. L. G. W. U., and by various other similar acts and conduct, has interfered with, restrained and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations of their own choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates and perpetuates continuing intimidation, interference, restraint and coercion by respondent in violation of Section 8 (1), (2) and (3) of said Act and is, therefore, invalid, void and of no effect.

13. That aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and at a time when [fol. 361] the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void and of no effect.

14. That by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees

in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent constitute unfair [fol. 362] labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the twenty-seventh (27th) day of April, nineteen hundred and thirty-nine (1939), issues its complaint against the Donnelly Garment Company, respondent herein.

(Signature omitted.)

[fol. 364] (Board's Exhibit No. 1-CC.)

Case No. XVII-C-371—Date 6/5/39.

Amended Charge.

United States of America, Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and  
International Ladies' Garment Workers' Union.

Case No. XVII-C-371.

Date Filed April 6, 1939.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Donnelly Garment Company, 1820 Walnut Street, Kansas City, Missouri, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2) & (3) of said Act, in that on or about April 27, 1937, it, by its officers, agents and employees, formed among its employees at its Kansas City, Missouri plant a labor organization known as "Donnelly Garment Workers Union," which organization was the successor to and a continuation of the Donnelly Loyalty League, previously dominated and interfered with in its formation and administration by said company, and at all times since on or about April 27, 1937, said company has dominated and interfered with the operation and administration of Donnelly Garment Workers Union, and has contributed financial and other support thereto, and did, on or about May 22, 1937, enter into a closed-shop contract with said Union, making membership therein a condition of employment.

On or about April 23, 1937, it, by its officers, agents and employees, terminated the employment of Sylvia Hull, and on or about April 26, 1937, the employment of May Fike because of their membership and activities in behalf of the International Ladies' Garment Workers' Union, a labor organization, and at all times since such dates, it has refused and does now refuse to employ the above-named employees.

By the acts set forth in the paragraphs above, and by intimidating and threatening its employees to refrain from becoming members or continuing membership in the International Ladies' Garment Workers' Union, by keeping members and meetings of said Union under surveillance, by the president of said company addressing its employees on or about March 18, 1937, and discouraging membership in said Union and encouraging membership in the Donnelly Loyalty League, by instigating, promoting or permitting a violent demonstration against members and sympathizers of the International Ladies' Garment Workers' Union to occur on company time and property, by discriminating in the allotment of work to members of said Union, by questioning employees concerning union activities, by entering into a closed-shop contract with the Donnelly Garment Workers Union, and making membership therein a condition of employment, and by other acts and conduct, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,  
By Jane Walker Palmer, Attorney,  
818 Scarritt Building, Kansas City,  
Missouri.

Subscribed and sworn to before me this 6th day of April, 1939, at Kansas City, Mo.

GORDON A. SMITH  
Notary Public.

My Commission expires Oct. 15, 1940.



[fol. 394] (Board's Exhibit No. 1-RR.)

Case No. XVII-C-371.—Date 6/5/39.

(Petition of Donnelly Garment Workers' Union for Leave to Intervene.)

United States of America

Before the National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

1. Now come Rose Todd; and Jack McConaughy, Marjorie Green, Walter Higgins, Bessie Weilett, Edith Williamson, Freeland Rife, Nina Smith and Mary McClelland, and state that they are respectively the chairman and members of the governing and executive committee of Donnelly Garment Workers' Union, a voluntary, unincorporated labor association, composed of all the employees of respondent, Donnelly Garment Company, and its associated company, Donnelly Garment Sales Company, below the grade of officer of the companies, or either of them, superintendents, supervisor or anyone with the right to employ or discharge; that they are the duly constituted representatives of said association; that said association has a membership of more than thirteen hundred persons; that said committee is authorized to intervene in this action; that the matters at issue in this cause are of common and general interest to all members of the association who constitute a class so numerous as to make it impracticable to bring them all before the Board; that said named persons by the authority so given them and in their own behalf and in behalf of all members [fol. 395] of their said association, all hereinafter referred to as Donnelly Garment Workers' Union, or as "intervener", file this, their petition for leave to intervene herein, and say:

2. Intervener is a duly organized, existing and functioning labor union.

3. Intervener, through its duly elected and constituted executive committee, has been since April 27, 1937, and now is the sole and exclusive collective bargaining agent for the said employees of respondent and its associated company. On or about May 27, 1937, intervener, through its said executive committee, bargained and concluded with the said respondent company and its associated company a contract covering working conditions, including a closed shop agreement, and on or about June 22, 1937, bargained and concluded with said companies a wage agreement; that said contracts are valid, binding and subsisting agreements and as such are valuable property rights owned and held by intervener and each and all of intervener's members.

4. The intervener is vitally interested in this matter because the charges made and the issues of fact and law raised by the allegations of the complaint challenge the validity of intervener's existence as a labor union, the validity of its contracts hereinabove referred to, and the jurisdiction of this Board is thereby invoked to have intervener's existence as a labor union declared invalid, to have intervener disestablished, and to set aside its contracts. The allegations of the complaint specifically charge, among other things, that respondent has dominated and interfered in the formation and administration of intervener, has given intervener financial aid and other support, has interfered with and coerced intervener's [fol. 396] members so as to destroy their freedom of choice, and has acted, in other ways, contrary to law, so as to destroy intervener's existence as a bona fide labor union under the Wagner Act and to destroy the validity and binding effect of its contracts hereinabove referred to. The issues of fact and law involved in the cause at bar concern intervener in that its members' legal and constitutional guaranties of freedom of choice, liberty of contract and property rights in contract are at stake, and if intervener is denied the right to intervene in this cause and protect its said rights, intervener and its members will have been deprived of their liberty and property without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States.

5. Intervener denies that the allegations referred to are true.

Wherefore, intervener, Donnelly Garment Workers' Union, acting for and in behalf of all its members, too numerous to name or to be made parties hereto individually, prays that an appropriate order be made and entered herein permitting it to intervene in this matter, to be represented by counsel, to present evidence and arguments, to examine and cross examine witnesses, and to have full and unrestricted rights to establish, maintain and support its position and defense herein asserted, or as may be asserted in any permitted amendment, to the same extent as if it were named a respondent or full party to this proceeding.

**DONNELLY GARMENT WORKERS'  
UNION**

By Rose Todd, Chairman of Executive Committee.

**GOSSETT, ELLIS, DIETRICH AND  
TYLER**

**FRANK E. TYLER**

**THOMAS J. PATTEN, LUCIAN LANE**  
Attorneys for Intervener.

State of Missouri

County of Jackson—ss.:

Rose Todd, of lawful age, being first duly sworn, upon [fol. 397] her oath, says that she is the chairman of the executive committee of intervener, Donnelly Garment Workers' Union; that she makes this affidavit for and on behalf of said intervener by authority of its executive committee; that she has read the foregoing petition and that the facts and matters therein stated are true and correct.

**ROSE TODD.**

Subscribed and sworn to before me this 2nd day of May, 1939.

(Notarial Seal)

**MYRTLE BONNELL,**

Notary Public, Jackson  
County, Missouri.

My commission expires Feby. 16, 1942.

[fol. 399] (Board's Exhibit No. 1-SS.)

Case No. XVII-C-371.—Date 6/5/39.

(Order permitting Intervention of Donnelly Garment  
Workers' Union.)

United States Of America

Before The National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers Union, Party to the Contract

Case No. XVII-C-371

Petition of Donnelly Garment Workers Union for Leave  
to Intervene having previously been filed in the above-  
entitled matter by the Donnelly Garment Workers Union  
and said petition having been duly considered:

It Is Hereby Ordered that the Donnelly Garment Work-  
ers Union may intervene in the above-entitled matter to  
such extent as its interests may appear.

Dated at Kansas City, Missouri, this third (3d) day of  
May, nineteen hundred thirty-nine (1939).

Seal  
National Labor  
Relations Board

PAUL F. BRÖDERICK,  
Acting Regional Director,  
Seventeenth Region,  
National Labor Relations Board,  
1016 Scarritt Building,  
Kansas City, Missouri.

{fol. 400] (Board's Exhibit No. 1-AAA.)

Case No. XVII-C-371.—Date 6/5/39.

(Answer of Intervener, Donnelly Garment Workers' Union,  
to Complaint.)

United States Of America

Before The National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Come now Rose Todd, and Jack McConaughy, Marjorie Green, Walter Higgins, Bessie Weilert, Edith Williamson, Freeland Rife, Nina Smith and Mary McClelland, being respectively the chairman and members of the governing and executive committee of Donnelly Garment Workers' Union, a voluntary, unincorporated labor union composed of all the employees of respondent, Donnelly Garment Company, and its associated Company, Donnelly Garment Sales Company, below the grade of officer of the companies, or either of them, superintendents, supervisor or anyone with the right to employ or discharge, in behalf of themselves and of all the members of said association, a class so numerous as to make it impracticable to bring all of them before the Board, all appearing herein as interveners, in the name of their union, Donnelly Garment Workers' Union, as intervener, by leave of court, for answer to the complaint of the National Labor Relations Board:

1. Admit the allegations in paragraphs 1, 2 and 3 of the complaint herein.

2. Admit that Donnelly Garment Workers' Union is a {fol. 401] labor organization within the meaning of Section 2 (5) of National Labor Relations Act, deny that Donnelly Loyalty League was or is a labor organization, deny that it was the predecessor of Donnelly Garment



Workers' Union, and deny that it has been or is in any way connected with or related to Donnelly Garment Workers' Union.

3. Deny the allegations of paragraphs 5, 5 (a), 5 (b), and 5 (c).

4. Admit that respondent and intervener entered a closed shop agreement on or about May 22, 1937, creating as a condition of employment membership in said Donnelly Garment Workers' Union, and deny all other allegations contained in paragraph 5 (d) of said complaint.

5. Deny all the allegations and conclusions of fact and law set forth in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of said complaint.

And specifically deny each and every allegation contained in said complaint not specifically admitted herein.

**DONNELLY GARMENT  
WORKERS' UNION,**

By Rose Todd,

Chairman of Executive Committee.

**GOSSETT, ELLIS, DIETRICH,  
& TYLER, FRANK E. TYLER,  
LUCIAN LANE, THOMAS J.  
PATTEN,**

o Their Attorneys.

State Of Missouri,

County Of Jackson—ss.:

Rose Todd, of lawful age, being duly sworn upon her oath says that she is chairman of the governing, and executive committee of the Donnelly Garment Workers' Union, intervening defendant herein, in behalf of all its members; that she has read the foregoing answer and knows the contents thereof, and that all of the statements therein made are true as she either personally knows or is reliably informed and verily believes.

**ROSE TODD.**

Subscribed and sworn to before me this 2 day of May, 1939.

My commission expires Feby. 16, 1942.

Notarial  
Seal

**MYRTLE BONNELL,**  
Notary Public, Jackson County, Missouri.

[fol. 403]

(Board's Exhibit No. 1-JJJ.)

Case No. XVII-C-371.—Date 6/5/39.

(Answer of Respondent, Donnelly Garment Company,  
to Complaint.)

United States Of America

Before The National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union; Party to the Contract.

Case No. XVII-C-371

Comes now the above named Donnelly Garment Company, respondent, whose postoffice address is 1828 Walnut Street, Kansas City, Missouri, and files this its answer to the complaint filed herein, reserving, however, all objections and rights to object to the jurisdiction of the Board, and all objections and rights to object to the competency, authority, reasonableness and good faith of the Board in issuing said complaint and all objections and rights to object to the sufficiency of said complaint and to the amended charge upon which the said complaint is based, and to the relevancy or materiality of the allegations contained therein.

Respondent specifically denies each and every allegation in said complaint contained except as specifically and expressly admitted and makes further answer thereto as follows, to-wit:

[fol. 404]

A.

Respondent avers and states that the National Labor Relations Board is without jurisdiction to maintain this proceedings and the same must be dismissed for the following reasons:

1. The Labor Board exceeded its jurisdiction in issuing the complaint herein at the request of an organization which does not represent a single employee in respondent's plant, has never raised a question as to representation upon which the Labor Board could hold an election and has been found by a United States Federal Court to be engaged in an unlawful conspiracy to force respondent to compel its employees to join said organization against their wills. The National Labor Relations Act does not vest the Labor Board with authority or power under said circumstances to maintain unfair labor practice proceedings.

2. The Labor Board exceeded its jurisdiction in issuing the complaint herein for the purpose of attempting to abrogate and nullify contracts between respondent and the exclusive representative of one hundred per cent of its employees when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union and other garment manufacturers in this part of the country. The National Labor Relations Act does not vest the Labor Board with authority or power to interfere with, abrogate, or nullify, contracts concerning terms and conditions of employment which are satisfactory to every employee in respondent's plant.

[fol. 405] 3. The proceedings herein deprive respondent of its liberty and property without due process of law as guaranteed in the Fifth Amendment to the Constitution of the United States in that if this proceeding were sustained, respondent would be denied its constitutional right to freely contract with the chosen representatives of all of its employees and to freely determine and agree upon all terms and conditions of employment, including representation, without a judicial hearing.

4. The proceedings herein deprive respondent of its liberty and property as guaranteed in the Fifth and Seventh Amendments to the Constitution of the United States, because if said proceedings were sustained valid contracts between respondent and the chosen representa-

tives of all of its employees would be abrogated and nullified without a judicial hearing, due process of law, and a trial by jury.

5. The proceedings herein providing for the awarding of unearned wages to Sylvia Hull and May Fike, former employees of respondent, together with their reinstatement, deprive respondent of property without due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States, and would deprive respondent of its right to trial by jury as guaranteed in the Seventh Amendment to the Constitution of the United States.

6. That the amended charge filed herein by the International Ladies' Garment Workers' Union does not allege the names of the individuals involved and the times and [fol. 406] places of occurrences said to constitute the purported unfair labor practices, and is vague, indefinite and does not state facts sufficient upon which a formal complaint by the Labor Board could be founded.

7. The National Labor Relations Act does not vest in the Labor Board the authority or power to allege conclusions of the Board purporting to show that respondent has in fact committed acts in violation of the National Labor Relations Act. That the National Labor Relations Board, in its complaint, pre-judges as true the amended charge filed herein in advance of any trial or opportunity to respondent to be duly and properly heard, all in violation of respondent's rights under the Fifth Amendment to the Constitution of the United States.

8. That the complaint filed herein is vague, indefinite, insufficient, and alleges conclusions of the Board and not facts as required by the National Labor Relations Act and Rules and Regulations, Series 1 as amended, of the National Labor Relations Act, Article II, Section 4. It does not inform respondent as to the facts involved in the alleged unfair labor practices, the names of the individuals and times and places of occurrences which are intended to

be charged against respondent, all in violation of due process of law as provided for by the **Fifth Amendment** to the Constitution of the United States.

9. This proceeding and the maintenance thereof, deprive respondent of liberty and property without due process of law contrary to the provisions of the Fifth [fol. 407] Amendment to the Constitution of the United States and constitutes an unlawful delegation of judicial power of the United States as provided for in Sections 1 and 2 of Article III of the Constitution of the United States, to wit, the said National Labor Relations Board is authorized to make an ex parte investigation when a charge is filed with the Board alleging an unfair labor practice on the part of an employer. That after investigation the said National Labor Relations Board, if it appears that a proceeding in respect thereto should be instituted, files a solemn complaint against such employer which complaint indicates the judgment of the Board that the employer has violated the Act as charged; that having thus instituted proceedings against the employer the National Labor Relations Board, through its agents, prosecutes said complaint based on said charge and investigation before another of its agents; that said agent reports his findings to the National Labor Relations Board, and the said Board from the said report makes its findings of fact conclusive in character; that thereupon the said Board purports to act as investigator, complainant, prosecutor, trier of the facts and judge of the controversy; that respondent is denied a judicial review of the evidence in accordance with the rules of law and evidence; that the foregoing procedure compels respondent to submit the controversies involved to the prosecutor and complainant thereof who has pre-judged the issues and in the light thereof is biased and prejudiced and can not and will not grant to respondent a fair and impartial trial and will deprive respondent of liberty and property without due process of [fol. 408] law contrary to the Fifth Amendment to the Constitution of the United States, and further compel respondent to submit to a determination of the issues involved by an administrative agency purporting to exercise judicial powers in violation of Sections 1 and 2 of Article III of the Constitution of the United States. For the foregoing



reason, this proceeding and the maintenance thereof is void and unconstitutional.

10. If it be construed that the amended charge and complaint filed herein raises a question as to representation within the meaning of Section 9 (c) of the National Labor Relations Act, the said amended charge and/or the complaint does not allege, nor is it a fact, that the International Union has at any time requested the National Labor Relations Board to investigate any question concerning the representation of the Donnelly Garment Company employees. That the amended charge and the complaint does not allege, nor is it a fact, that the National Labor Relations Board has at any time investigated any question concerning the representation of the Donnelly Garment Company employees. That the said Donnelly Garment Workers' Union has repeatedly offered to submit to a secret election under the auspices of the Labor Board in order that a determination could be had of the true choice and desire of each employee at the Donnelly plant. That said offers have been repeatedly refused by the representatives of the Labor Board. That said determination is a condition precedent to a trial on the alleged charges of unfair labor practices set forth in the complaint.

[fol. 409]

B.

For further answer, respondent avers and states that the complaint herein must be dismissed for the reason that the National Labor Relations Board, its agents and representatives, have exceeded their authority and have demonstrated their bias and prejudice against respondent, and collusion with the International Union, by the filing of the complaint herein and the maintenance of this proceedings in the face of the following facts of which the Board and its representatives have actual knowledge, to wit:

During all of the times mentioned in the amended charge and the complaint filed herein, the International Ladies' Garment Workers' Union, David Dubinsky, president, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, their agents and members, were engaged in an unlawful conspiracy to injure and destroy respondent's business for the sole purpose of forcing respondent in vio-

lation of the National Labor Relations Act to compel its employees against their wills to join the International Union and subject themselves to its domination and control. In furtherance of this conspiracy, the said International Union, its officers, agents and members, published or caused to be published false and libelous reports about respondent and the working conditions in its plant, and inaugurated and threatened to inaugurate secondary boycotts against respondent's customers and its merchandise in the various states of the Union, and threatened to cause gangs of lawless persons to assault respondent's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets, assaulting them with knives, razor [fol. 410] blades and other deadly weapons, which they perpetrated or caused to be perpetrated against the employees of other garment manufacturers in Kansas City, Mo., St. Louis, Mo., Memphis, Tenn., and Dallas, Texas. The said International Union announced in the public press that it had set aside a fund of \$250,000 to finance its campaign against respondent.

Respondent, on or about March 2, 1937, shortly after the International Union had publicly announced the opening of the drive against respondent and its employees, was notified by all of its employees except three that they refused to acknowledge or accept the International Union as their representative for the purpose of collective bargaining. The International Union, knowing that it did not represent a single employee in respondent's plant, and knowing of the protest by the employees above mentioned, on or about March 9, 1937 sent to respondent a letter containing statements of alleged conditions of employment at respondent's plant which were known by the writers to be false and which were maliciously made. A conference was requested for the purpose of making a closed shop contract with respondent. Respondent determined that in the circumstances it could not legally contract with the International and did not reply to said letter. The International, on or about March 15, 1937, began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company and Gernes Garment Company, all of Kansas City, Mo., for the purpose

of compelling those companies to force their employees to join the International. At said time, the International did not represent a single employee of the Gernes Garment Company, and a very small minority in the two other said companies. Agents of the International Union announced that the acts of violence perpetrated against the employees of said companies would be perpetrated against the employees of respondent company and would be commenced against respondent's employees after the above mentioned companies had capitulated and yielded to the demands of the Union for a closed shop. The International further began the circulation throughout the country of the false and libelous statements contained in the above letter of March 9th.

Respondent was advised, on or about April 23, 1937, that one hundred per cent of its employees had voluntarily formed a union styled "Donnelly Garment Workers' Union" and selected their own representatives for the purpose of collective bargaining, and for the purpose of protecting themselves against the threatened assault of the International. Respondent did not suggest the formation of said Union or in any way interfere with or coerce its employees in the formation of the same and has at no time since interfered with or in any manner contributed, financially or otherwise, to the maintenance of the said union. That thereafter representatives of said Donnelly Garment Workers' Union requested that respondent enter into a collective bargaining agreement covering all terms and conditions of employment. Respondent thereupon sought to obtain a determination by the representatives of the Labor Board as to the right of said Union to be the exclusive bargaining agent of all of said employees, but was advised by the said representatives of the Labor Board that under the rulings of the Labor Board an application by an employer for certification or an [fol. 412] election could not be granted. Thereafter respondent, on or about May 27, 1937, after negotiations, entered into a collective bargaining contract with the representatives of its employees which contract is now in full force and effect and provides for higher wages and more favorable conditions of employment than are contained in any contract which the International Union has

entered into with other garment manufacturers in this part of the country. Respondent and one hundred per cent of its employees settled all matters pertaining to the terms and conditions of employment and to employee representation, and there is not now, nor has there been, any dispute over the same.

Respondent on July 5, 1937, instituted in the United States District Court for the Western Division of the Western District of Missouri a suit to enjoin the said International Union, David Dubinsky, President, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, officers, agents and members of said union from committing the unlawful acts of fraud and violence above described. A restraining order was thereupon issued by United States District Judge Otis enjoining the International, its officers, agents and members, from doing any of the unlawful acts complained of.

The International Union and other defendants in said case requested a three judge court to hear the case. Honorable Alva S. Van Valkenburgh, United States Circuit Judge and Honorable Albert L. Reeves, United States District Judge, were thereupon designated to sit with Honorable Merrill E. Otis, United States District Judge, [fol. 413] in the trial of the case. After an exhaustive hearing of evidence upon respondent's application for temporary injunction, Judge Van Valkenburgh and Judge Reeves in the majority opinion granted the temporary injunction and found the International, its officers and agents, to be guilty of the acts complained of in respondent's petition; copies of said opinions are hereto attached and marked Exhibit "A" and made a part of this Answer as though set out in *haec verbae*. United States District Judge Otis stated in substance that respondent had made an overwhelming case for an injunction but had not complied with the technical requirements of the Norris-LaGuardia Act which prohibits the issuance of an injunction by a Federal Court unless said requirements have been complied with (21 Fed. Supp. 809). The said findings of fact and conclusions of law made by said three judge court are attached hereto, marked Exhibit "A-1" and made a

part of this Answer as though set out in hac verbae. The International and other defendants appealed the judgment of said three judge court to the Supreme Court of the United States, which court held that the said suit was not one which required a three judge court and remanded the case to the United States District Court for a trial before a single judge (304 U. S. 243; 58 S. Ct. Rep. 875).

Thereafter, on or about August 25, 1938, respondent received the following letter from Ernest C. Dunbar, then acting regional director of the National Labor Relations Board, to-wit:

[fol. 414] "National Labor Relations Board  
Seventeenth Region  
Scarritt Bldg.,  
Kansas City, Missouri.

August 25, 1938

Mrs. James A. Reed, President  
Donnelly Garment Company.  
1828 Walnut Street  
Kansas City, Missouri

Re: Donnelly Garment Company  
Case No. XVII-C-371.

Dear Mrs. Reed:

There was filed with the Seventeenth Regional Office of the National Labor Relations Board on August 9, 1938, against the Donnelly Garment Company, by Jane Walker Palmer, on behalf of the International Ladies' Garment Workers Union, charges of unfair labor practice within the meaning of Section 8, sub-Sections (1) (2) and (3) of the National Labor Relations Act, in that on or about March 18, 1937, and at various times since that date, said company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of said Act, and that on or about April 27, 1937, and at all times since said date, said company interfered with and controlled the formation and administration of a labor organization among said company's employees, known as the "Donnelly Garment Workers Union" and further, that said company did on various dates discharge certain of its employees for the reason that they had joined or had assisted a labor organization of their own choosing.



and have at all times since said discharges refused to reinstate said employees.

Will you or your representative call at this office, 1016 Scarritt Building, Kansas City, Missouri, in the very near future and at your convenience, for the purpose of discussing informally the charges alleged by the International Ladies Garment Workers Union, the meeting to be strictly informal and to help us in our investigation of said charges.

Sincerely yours,

ERNEST C. DUNBAR  
Acting Regional Director."

Respondent promptly communicated with said Ernest C. Dunbar and requested the names of individuals involved and the times and places of occurrences which were charged to constitute a violation of the National Labor Relations Act. This information was denied respondent. [fol. 415] Respondent repeatedly requested the opportunity to present evidence concerning any charges of unfair labor practice. The said representatives of the Board denied respondent this privilege. They threatened the filing of a complaint and a lengthy trial thereon unless respondent acceded to the demands of the International Union. They asserted that in case of a trial the Labor Board would find against respondent.

Conferences between the Labor Board, respondent, and the representative of the Donnelly Garment Workers' Union were later participated in by a representative of the International Union, and all matters alleged to be in controversy were then discussed, and the representative of the International Union in said conference admitted that the employees of the respondent company did not desire to belong to the International Union or be represented by it for the purpose of collective bargaining.

On or about February 4, 1939, at the request of the representatives of the Labor Board, the respondent, the Donnelly Garment Workers' Union, the International Union, and the acting regional director of the Labor Board, submitted to each other in writing proposals of settlement of all alleged matters in controversy between the parties. The International Union made the following proposal:

"1. The Donnelly Garment Company must consent that a decree be entered in the United States Circuit Court of Appeals for the Eighth Circuit disestablishing the Donnelly Garment Workers' Union as an agency for collective bargaining and the representation of the workers.

"2. Those employees, members of the International Ladies' Garment Workers' Union who were discharged and discriminated against because of their activities in behalf of that union, must be offered reinstatement with back pay.

[fol. 416] "3. The case of Donnelly Garment Company et al., against International Ladies Garment Workers' Union, et al., No. 2924, now pending in the District Court of the United States for the Western Division of the Western District of Missouri, must be dismissed at plaintiffs' cost.

The International agrees:

"First: To cease all activities of every kind and character which tend to keep anyone from purchasing any of the products of the Donnelly Garment Company, so long as the Donnelly Garment Company does not recognize any plant union as the bargaining representative of its employees.

"Second: The International Ladies' Garment Workers' Union will agree that it will continue the efforts to organize the workers of the Donnelly Garment Company by peaceful and lawful methods."

Said proposal required respondent to violate the plain terms of the National Labor Relations Act and forever to deny their employees the right guaranteed by the law to designate their own representatives for the purpose of collective bargaining.

The proposal of the representative of the Labor Board demonstrates a prejudgment of the issues involved on the ex parte evidence of the International and further demonstrates their efforts to assist and abet the International Union in its conspiracy to force respondent to violate the terms and conditions of the National Labor Relations Act

in order to prevent the destruction of its business. A copy of said proposal is attached hereto, marked Exhibit "B" and made a part of this answer as though set out in haec verbae.

Respondent advised that it could not legally and lawfully accept either the proposal of the International or of the Labor Board.

A trial of the above mentioned injunction suit was commenced March 22, 1939 and after an extended hearing of evidence, the District Court granted respondent a permanent injunction against the International Union, its officers, agents and members.

[fol. 417] The Court said of the International Union's aid against respondent: "They were caught doing unlawful things and for that they are being dealt with as law breakers".

The decree of the Court, together with the findings of facts and conclusions of law are attached hereto, marked Exhibit "C" and made a part of this Answer as though set out in haec verbae.

Respondent states that the circumstances surrounding the filing of the complaint herein and the constant attendance of the representatives of the Labor Board at the hearing for permanent injunction in the above mentioned injunction case and their frequent consultations during the examination of respondent's witnesses with representatives of the International Union, further demonstrates that the Labor Board has assisted and is assisting the International Union in its conspiracy against respondent company and is maintaining the proceedings herein in violation of any authority vested in the Labor Board by the National Labor Relations Act. Respondent states that the International Union instituted this proceeding as a part of its unlawful conspiracy above described and in bad faith. That the Labor Board, having knowledge of all of the foregoing facts, must dismiss the proceedings in accordance with the spirit and plain provisions of the National Labor Relations Act, the anti-trust laws of the United States, and the laws of the land.

## C.

Respondent herewith petitions for investigation and certification of representatives of its employees, pursuant to Section 9 (c) of the National Labor Relations Act. The [fol. 418] respondent employs approximately 1200 persons who have advised respondent that they have formed and are maintaining a voluntary unincorporated plant union restricted to persons employed in respondent's plant. Respondent has been advised that one hundred per cent of said employees organized and are now members of said plant union, styled "Donnelly Garment Workers' Union". The International Union claims that the said Donnelly Garment Workers' Union is not the true representative of a majority of the employees of respondent's plant. Respondent, prior to May 27, 1937, but after the organization of the said Donnelly Garment Workers' Union, was furnished evidence of the membership of all of its employees in said union, and the representatives of said union requested that respondent enter into collective bargaining contract with said union, which said contracts, after negotiations, were entered into on May 27 and June 22, 1937. That respondent is and has been at all times willing to deal with the true representatives of a majority of its employees for the purpose of collective bargaining. The respondent further alleges that the question concerning representation is a question affecting commerce within the meaning of the National Labor Relations Act. Therefore, respondent requests that pursuant to Section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate the true representatives of its employees by election or otherwise, and certify to respondent the name or names of the representatives that have been designated or selected by said employees.

[fol. 419]

## D.

1. Further answering said complaint and particularly paragraph numbered 1 thereof, respondent admits that it is a corporation organized and existing under the laws of the State of Missouri with its factory and principal place of business at 1828 Walnut Street, Kansas City, Missouri, and is engaged in the business of manufacturing and selling ladies' garments.

2. Further answering said complaint and particularly paragraph numbered 2 thereof, respondent admits that it purchases a substantial portion of its materials used in the manufacture of its garments from states other than the State of Missouri, and sells a substantial portion of its garments in states other than the State of Missouri.

3. Further answering said complaint and particularly paragraph numbered 3 thereof, respondent denies that the International Ladies Garment Workers Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act, and therefore denies the allegations of said paragraph 3 thereof.

4. Further answering said complaint and particularly paragraph numbered 4 thereof, respondent admits that Donnelly Garment Workers Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act. Respondent denies, on information and belief, that the Donnelly Loyalty League referred to in said paragraph numbered 4 is or ever was a labor organization within the meaning of Section 2 (5) of said [fol. 420] Act and further denies that said Donnelly Loyalty League is a predecessor of the Donnelly Garment Workers Union. Further answering, respondent on information and belief says that said Donnelly Loyalty League is not a labor organization and has never purported to act as a labor organization and has never dealt with respondent as a labor organization, but is a social organization of employees of respondent and is not connected in any way with the Donnelly Garment Workers Union as predecessor or otherwise; that respondent did not form, or assist in, or interfere with the formation of, said Donnelly Loyalty League and has not dominated same or maintained same, or assisted in the administration of same, or rendered financial or other support to same; and respondent further says that said Donnelly Loyalty League and its activities and all allegations of the complaint with reference to same are wholly irrelevant and immaterial to any matter within the jurisdiction of the National Labor Relations Board and that all allegations of the complaint with reference thereto should be dismissed.



5. Further answering said complaint and particularly paragraph numbered 5 thereof, respondent denies each and every the allegations, statements and averments in said paragraph 5, and in each of the subparagraphs thereof, contained.

Respondent further specifically denies that on or about April 27, 1937, and/or at any time since said date down to and including the date of the filing of said complaint, that it has dominated or interfered in the formation and/ [fol. 421] or administration of a labor organization among its employees known as "Donnelly Garment Workers' Union" and/or that it has given financial aid or other support to said organization, in any of the ways, methods or manner alleged or set forth in said paragraph 5, or in any other way, shape or manner whatsoever.

(a) Further answering said complaint and particularly paragraph numbered 5 (a) thereof, respondent specifically denies that it encouraged, allowed or permitted supervisory and other employees acting in the interest of respondent to organize, promote, encourage or coerce membership into the Donnelly Garment Workers' Union on respondent's time or on respondent's property or at respondent's pay or expense, or at any other time or in any other way or manner.

(b) Further answering said complaint and particularly paragraph numbered 5 (b) thereof, respondent specifically denies that it did, through its officers and agents acting in the interest of respondent, furnish financial or other support to Donnelly Garment Workers' Union, in that supervisory or other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers' Union during working hours and on company property without loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers' Union, and denies that it contributed or furnished financial or other support or aid to Donnelly Garment Workers' Union in any way or by any means

[fol. 422] (c) Further answering said complaint and particularly paragraph numbered 5 (c) thereof, respondent specifically denies that it did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, and denies that it formed said Donnelly Loyalty League for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and/or that the officers and agents of respondent dominated or continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, or for any period of time, and further denies that at said time, or at any other time or place, said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers' Union, and/or that said Donnelly Garment Workers' Union was created to be a continuation of the Donnelly Loyalty League and/or to effect and carry out the policies of said Donnelly Loyalty League, and/or to be subversive and to be amenable to the wishes of respondent.

Respondent further says that the allegations in the complaint that respondent through its officers and agents formed the Donnelly Loyalty League on or about February 12, 1935, and dominated and continued to dominate it, are immaterial and irrelevant and state no case against respondent cognizable within the jurisdiction of the National Labor Relations Board; that the National Labor Relations Act was not approved until July 5, 1935, and any hearing or determination of said allegations or any [fol. 423] of them by the National Labor Relations Board or any rule or order which said Board might or may make against the respondent by reason of, or based upon said allegations or any of the same, would be beyond the jurisdiction of said Board, and contrary to and violative of Section 9 of Article I of the Constitution of the United States, and any ruling or order which said Board might or may make against respondent by reason of or based upon said allegations or any of same would be and constitute a denial to respondent of due process of law and would deprive respondent of its liberty and property without due process of law, all contrary to and violative of the Fifth Amendment of the Constitution of the United States; and

by reason thereof, respondent says that the allegations of said paragraph numbered 5 (c) of the complaint should be dismissed.

(d) Further answering said complaint and particularly paragraph numbered 5 (d) thereof, respondent admits that on or about May 22, 1937, respondent entered into an agreement with Donnelly Garment Workers' Union providing for rates of pay, hours of work and other conditions of employment, but specifically denies that said agreement was made for the purpose of assisting said Donnelly Garment Workers' Union or of compelling membership therein or of depriving respondent's employees of their rights guaranteed under the National Labor Relations Act, or to manifest its approval of or to lend support to said Union.

Further answering, respondent says that the National Labor Relations Act expressly authorizes a "closed shop" [fol. 424] contract, such as that made by respondent with the Donnelly Garment Workers' Union as representative of all of its employees, and the making of said "closed shop" contract and the provisions thereof constitute no violation of the National Labor Relations Act and constitute no unfair labor practice or any unlawful discrimination. That by reason of the foregoing, the allegations of said paragraph numbered 5 (d) of the complaint should be dismissed.

6. Further answering said complaint and particularly paragraph numbered 6 thereof, respondent specifically denies that by the alleged acts or any of them, alleged or set forth in paragraph 5 of said complaint or referred to in said paragraph 6, and/or by any other acts, it has dominated or interfered with the formation and administration of or has contributed financial aid or other support to labor organizations, and/or that it did thereby or in any manner or way engage in or is thereby or in any manner or way engaging in unfair labor practices within the meaning of Section 8 (2) of the National Labor Relations Act.

7. Further answering said complaint and particularly paragraph numbered 7 thereof, respondent specifically denies that by the alleged acts or any of them alleged or

set forth in paragraph 5 of said complaint or referred to in said paragraph 7, or by any other acts, it has interfered with, restrained and/or coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act or that it has thereby or in [fol. 425] any other way or manner engaged in or is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Further answering said complaint and particularly paragraph numbered 8 thereof, respondent specifically denies that, by its officers and agents at its Kansas City, Missouri, factory, while engaged in the alleged operations described in paragraphs 1 and 2 of said complaint, or otherwise, discharged from its employment Sylvia Hull on or about April 23, 1937, and/or May Fike on or about April 26, 1937, for the reasons that they had joined and/or assisted the I. L. G. W. U. and/or engaged in concerted activities in its behalf, and denies that it thus discouraged membership in the I. L. G. W. U., and denies that it discharged either of said persons for the purpose of discouraging membership in the I. L. G. W. U., and respondent denies that said Sylvia Hull and May Fike were discharged by respondent from its employ, but states that said Sylvia Hull and May Fike voluntarily left the employment of the respondent and thereupon ceased to be employees of respondent within the meaning of any of the provisions of the National Labor Relations Act. That because of each and all of the foregoing matters, the respondent is not now and has not been guilty of any unfair labor practices arising out of the alleged acts set forth in said paragraph 8, or of any discriminatory acts arising out of said alleged matters, and said paragraph 8 and the allegations thereof should be dismissed.

[fol. 426] 9. Further answering said complaint and particularly paragraph numbered 9 thereof, respondent specifically denies that it discharged or refused to reinstate said Sylvia Hull and May Fike, or either of them, for the alleged reasons or any of them set forth in paragraph 8 of the complaint or referred to in said paragraph 9, and denies that it has discriminated or is discriminating in regard to the hire and tenure of employment of said Sylvia Hull and May Fike, or either of them, for any of said



reasons; and specifically denies that, by reason of any of the matters, things, or reasons, set forth in said paragraph 8 or referred to in said paragraph 9, or by any other means whatsoever, it engaged in or is engaged in unfair labor practices within the meaning of said Section 8 (3) of the National Labor Relations Act, but respondent states that said Sylvia Hull and May Fike voluntarily left the employment of the respondent during respondent's busy season, when respondent was desirous of retaining them in its employ; that their employment by or work for respondent did not cease as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practices on the part of respondent; that Sylvia Hull became employed by the International Ladies' Garment Workers' Union as an organizer and May Fike obtained substantially equivalent employment elsewhere; that they did not then and do not now desire reemployment by respondent; that they voluntarily left respondent's employment and that they were not discharged or refused reemployment because of their union activities or as a punishment for, or as discouragement of union activities or union membership, or for any reason denounced by the National Labor Relations Act, but solely for other reasons pertaining to their conduct and qualifications as efficient and reliable operators.

[fol. 427] 10. Further answering said complaint and particularly paragraph numbered 10 thereof, respondent specifically denies that by the alleged acts referred to in said paragraph 10 and/or set forth in paragraph 8 of said complaint, or any of them, it has interfered with, restrained or coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act and/or that it did thereby engage in or is thereby engaging in unfair labor practices within the meaning of Section 8(1) of said Act.

11. Further answering said complaint and particularly paragraph numbered 11 thereof, respondent specifically denies that it has done or is now doing any of the alleged acts or things in said paragraph 11 set forth or referred to,



and specifically denies that by the alleged acts referred to in said paragraph 11 and/or set forth in paragraphs 5 and 8 of the complaint, or any of them, or that by interfering with, coercing, intimidating or threatening its employees to refrain from becoming members or continuing membership in the I. L. G. W. U., or by keeping members and meetings of the I. L. G. W. U. under surveillance, or by openly manifesting bitter hostility to the I. L. G. W. U., or by the issuance of written or oral statements designed or calculated to discourage membership in the I. L. G. W. U., or by showing preference or favoritism to the Donnelly Garment Workers' Union, or making membership therein a condition of employment, or by depriving its employees of the opportunity of joining an organization of their own choosing, or by discriminating in the allotment of work to members or sympathizers of the I. L. G. W. U., or by questioning employees individually and collectively [fol. 428] with regard to their union activities and prejudices, or by instigating, allowing or permitting violent demonstrations upon its time and property against certain employees of respondent who were members of the I. L. G. W. U., or by various or any other similar or different acts and conduct, it has interfered with, restrained or coerced, or is interfering with, restraining or coercing its employees in the exercise of their rights to form, join or assist labor organizations of their own choosing, and/or that it did thereby engage in or is thereby engaging in unfair labor practices within the meaning of said Section 8 (1) of said Act.

12. Further answering said complaint and particularly paragraph numbered 12 thereof, respondent specifically denies that the "closed shop" contract referred to in said paragraph is a direct and proximate result of the alleged acts and conduct of respondent set forth in paragraphs 5 to 11 inclusive of the complaint, and denies that said closed shop contract constitutes, culminates and perpetuates continuing intimidation, interference, restraint and coercion by respondent in violation of Section 8 (1), (2) and (3) of the National Labor Relations Act, and denies that said closed shop contract is invalid, void and of no effect for said reasons or any other reasons; but respondent says

that such contract is expressly authorized by the National Labor Relations Act, and that the making thereof constitutes no violation of the National Labor Relations Act, and that the charges contained in paragraph 12 of the complaint should be dismissed.

[fol. 429] Respondent further states that David Dubinsky, President of the International Ladies' Garment Workers' Union, testified under oath at the hearing for permanent injunction in the case, elsewhere referred to in this answer, that said I. L. G. W. U. was seeking a "closed shop" contract with respondent, under which respondent would be obligated to employ only members of the I. L. G. W. U. That in the contracts made by said International Union with other garment companies in Kansas City, Missouri, said I. L. G. W. U. (which is the same union that filed charges herein against respondent), closed shop provisions were inserted when said union did not represent any of the employees of the one company and did not represent a majority of the employees of such other garment companies, and when a majority of said employees did not desire said I. L. G. W. U. to represent them. That in the face of sworn evidence of Perlstein and other witnesses adduced in the hearing of the above mentioned injunction suit, which was heard by representatives of the Labor Board, said representatives have taken no steps to protect the rights of said employees which under the law it is their duty to protect. That in view of the fact that one hundred per cent of respondent's employees have demanded a closed shop contract with respondent, the Labor Board is not vested with authority to emasculate the National Labor Relations Act by depriving respondent's employees of their right to designate their true representatives or to prohibit respondent from contracting with such representatives including the making of said closed shop agreement.

[fol. 430] 13. Further answering said complaint and particularly paragraph numbered 13 thereof, respondent denies that the closed shop contract therein referred to was entered into with the Donnelly Garment Workers' Union at a time when that union was not the representatives of respondent's employees within the meaning of

Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and/or at a time when the Donnelly Garment Workers' Union was a labor organization established, maintained and assisted by actions defined in the National Labor Relations Act as unfair labor practices, and denies that said closed shop contract is invalid, void and of no effect for said reasons or any other reasons; but respondent avers that at the time of the making of said closed shop contract, the Donnelly Garment Workers' Union was the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of said Act, and respondent further denies that it established, maintained or assisted said Donnelly Garment Workers' Union in any way or at any time; that the making of said closed shop contract is expressly authorized by the National Labor Relations Act, that respondent violated no provision of said Act in making said contract, and the charges contained in paragraph 13 of the complaint should be dismissed.

14. Further answering said complaint and particularly paragraph numbered 14 thereof, respondent specifically denies that by entering into the closed shop contract referred to in said paragraph, that it interfered with, restrained and/or coerced, or is interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and denies that it thereby did engage in or is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the National Labor Relations Act and denies that said closed shop contract is for such reasons or any other reasons invalid, void and of no effect; that such closed shop contract is expressly authorized by the National Labor Relations Act, and the charges contained in said paragraph 14 of the complaint should be dismissed.

15. Further answering said complaint and particularly paragraph numbered 15 thereof, respondent specifically denies that by entering into the closed shop contract referred to in said paragraph, it discriminated in regard to hire or tenure of employment and terms and conditions of employment, and denies that it did thereby discourage

membership in the International Ladies' Garment Workers' Union and denies that it did thereby encourage membership in the Donnelly Garment Workers' Union at a time when the Donnelly Garment Worker's Union was established, maintained and assisted by respondent or at any other time, and denies that respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act, and denies that the said closed shop contract is for such reasons or for any other reasons, invalid, void [fol. 432] and of no effect, and respondent further denies that the Donnelly Garment Workers' Union was established, maintained and assisted by respondent at any time; that the making of said closed shop contract violates no provision of the National Labor Relations Act, but is expressly authorized by said Act, and the charges contained in said paragraph 15 of the complaint should be dismissed.

16. Further answering said complaint and particularly paragraph numbered 16 thereof, respondent specifically denies that it did or pursued any of the activities set forth in paragraphs 5 to 15 inclusive of the complaint, and denies that any of said alleged acts or activities set forth in said paragraphs 5 to 15 inclusive of the complaint, occurred in connection with the operations of respondent described in paragraphs 1 and 2 of the complaint, and denies that said alleged acts set forth in paragraphs 5 to 15 inclusive of the complaint by themselves or occurring in connection with any of the operations of respondent described in paragraphs 1 and 2 of the complaint, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states, or tend to lead or have led to labor disputes burdening and obstructing commerce or the free flow of commerce.

17. Further answering said complaint and particularly paragraph numbered 17 thereof, respondent specifically denies that it has done or permitted any of the alleged acts referred to in paragraph 17 of the complaint and further [fol. 433] denies that said alleged acts constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of said Act, or any of them.



18. Further answering said complaint, respondent says that in and by each and all of its aforesaid denials, whether in the conjunctive or disjunctive form, of acts and matters charged or alleged in the complaint, respondent intends to and does deny each and all of such acts and charges severally and in the disjunctive and also collectively and in the conjunctive.

19. Further answering said complaint, respondent says that it has meticulously attempted to comply with and obey all the provisions of the National Labor Relations Act and denies that it has violated any of the provisions of said Act; that pursuant to the provisions of said Act and upon the demands of the chosen representatives of a majority of its employees, respondent made and entered into collective bargaining contracts with said representatives of a majority of its employees, to-wit: the Donnelly Garment Workers' Union, whose membership includes all employees of respondent, except those in executive and supervisory capacities; that by reason thereof and of the provisions of the National Labor Relations Act, respondent is precluded from bargaining collectively with any other union concerning terms and conditions of employment; that said contracts have been and are being complied with by respondent in every respect. Respondent further says [fol. 434] that it has not interfered with and has no desire to interfere with the free choice by its employees of representatives to bargain collectively for them, and at all times since the passage of the National Labor Relations Act, respondent has been willing to bargain collectively with any union or representatives selected by a majority of its employees, and that it has not discriminated against any employees because of their union or nonunion activities.

20. That by reason of the foregoing matters and things, respondent is not guilty of any of the unfair labor practices or acts charged in the complaint.

Wherefore respondent prays that said complaint be dismissed and that respondent be exonerated of the charges therein contained.

DONNELLY GARMENT COMPANY,  
By R. J. Ingraham, Secretary.

REED & INGRAHAM,  
Attorneys for Respondent.



[fol. 435] State of Missouri,  
County of Jackson—ss.:

Robert J. Ingraham of lawful age, being first duly sworn, upon his oath states:

That he is Secretary of the Donnelly Garment Company, respondent herein, and he makes this affidavit for and on behalf of said respondent being legally authorized so to do.

Affiant further states that none of the other officers of respondent Donnelly Garment Company is available to verify the foregoing answer.

Affiant further states that he has read the foregoing Answer, is familiar with the matters and facts therein stated, and that said allegations and facts are true to the best of his knowledge, information and belief.

ROBERT J. INGRAHAM,

Subscribed and sworn to before me this 29th day of May, 1939.

My commission expires July 14, 1941.

(Notarial Seal)

LAURA BAKER,  
Notary Public in and for  
Jackson County, Missouri.

[fol. 474]

Exhibit "B".

"National Labor Relations Board."  
Seventeenth Region,  
Searritt Building,  
Kansas City, Missouri.

February 4, 1939.

"Reed and Ingraham  
"1900 Telephone Building  
"Kansas City, Missouri

Gentlemen:

"This will acknowledge receipt of your "statement of position" as was agreed at the close of our last conference in connection with the charges now on file in this office.

against the Donnelly Garment Company filed by International Ladies' Garment Workers Union thru Jane Walker Palmer, attorney.

"In order to dispose of these charges the Board's position, based upon a very complete painstaking investigation, would require the following:

"1. Donnelly Garment Company post notices in conspicuous places throughout its plant and maintain said notices for a period of sixty days, which notices would state "Donnelly Garment Company will cease and desist from interfering with the rights of their employees to form, join or assist labor organizations, to bargain collectively thru representatives of their own choosing, and ,

"2. The Donnelly Garment Workers' Union forthwith be disestablished as an agency for the purpose of collective bargaining or in any manner to act as a representative of the employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act, and

"3. The Donnelly Garment Company offer full and immediate reinstatement without loss of seniority or any other rights and privileges previously enjoyed by them to all of the persons, (a list of whose names has already been furnished to you) who were discharged by reason of their membership in and/or activity in behalf of the International Ladies' Garment Workers or those whose discharges occurred prior to July 5, 1935, and whose applications for reinstatement to their former positions were refused because of their membership in and/or their activities in behalf of the International Ladies' Garment Workers and by making whole to said employees for such losses as they may have suffered by reason of their discharges and/or refusals to reinstate."

All of the above terms to be embodied into a decree, the entry of which in the Eighth Circuit Court of Appeals to be expressly consented to, which decree provides for the [fol. 475] enforcement in full of each and every provision thereof and further that the parties thereto expressly waive notice to the filing thereof.

"I assume that if the above is inconsistent with any understanding that you already have concerning our negotiations, you will promptly bring them to my attention.

Yours very truly,

PAUL F. BRODERICK,  
Acting Regional Director.

Copies to:

Clif Langsdale, Attorney for ILGWU  
Jerome Walsh, Attorney for ILGWU  
Jane Walker Palmer, Attorney for ILGWU  
Frank E. Tyler, Attorney for Donnelly  
Garment Workers' Union."

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[fol. 489] (Board's Exhibit No. 1-MMM.)

Case No. XVII-C-371.—Date 6/5/39.

(Application of Intervener, Donnelly Garment Workers' Union, for an Election by the Employees and for Continuance.)

Now comes Donnelly Garment Workers' Union, an unincorporated labor union, and files its application and request for an election by the employees of the Donnelly Garment Company as to their choice and desire in connection with membership in the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union, such an election to be held under the instructions and control of this Board to insure complete secrecy of the ballot of each employee; and the opportunity of each employee and of no one else to cast one ballot, and under such other restrictions and regulations as may to this Board seem just and proper, and as authorized by Section 9 (C) of the National Labor Relations Act:

Since such election would settle and determine many if not all of the questions involved in this pending hearing, intervenor asks that further proceedings in such

hearing be postponed until such election has been held and the results announced to the parties.

GOSSETT, ELLIS, DIETRICH &  
TYLER

FRANK E. TYLER

THOMAS J. PATTEN

LUCIAN LANE.

Attorneys for Intervener.

[fol. 491] (Board's Exhibit No. 1-NNN.)

Case No. XVII-C-371.—Date 6/5/39.

(Petition for Investigation and Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act.)

United States of America,

Before the National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the  
Contract.

Case No. XVII-C-371.

Name of employer, Donnelly Garment Company.

Address, 1828 Walnut.

General nature of business, Manufacturer of women's  
dresses.

Approximate total number of employees, 1,182.

Description of the bargaining unit which petitioner  
claims is appropriate, Donnelly Garment Workers' Union,  
a voluntary unincorporated union representing all em-  
ployees of respondent.

Approximate number of employees in such unit, 1,182.

Classification of employees in such unit, giving approximate number of employees in each department or class

.....

.....

.....

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining; All of them.....

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, International Ladies' Garment Workers' Union. ....

.....

.....

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: International Ladies' Garment Workers' Union contends that Donnelly Garment Workers' Union is not the voluntary choice of said employees as their representative for collective bargaining, that it is therefore an illegal union under Secs. 7 & 9 of National Labor Relations Act, that the contracts made by it with the employer are therefore invalid, and that Donnelly Garment Workers' Union is not entitled to be the exclusive representative of all of said employees.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give



also the name and official position of the person acting for the organization.)

**DONNELLY GARMENT WORKERS' UNION**

By Rose Todd,

Chairman of the Executive Committee.

Subscribed and sworn to before me this 16 day of May, 1939, at Kansas City, Mo.

**MYRTLE BONNELL,**

(Notarial Seal)

Notary Public, Jackson Co., Mo.

[fol. 492] (Board's Exhibit No. 1-000.)

Case No. XVII-C-371.—Date 6/5/39.

(Amended Petition for Investigation and Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act.)

United States of America

Before the National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Name of employer, Donnelly Garment Company.....

Address, 1828 Walnut.....

General nature of business, Manufacturer of women's dresses.....

Approximate total number of employees, 1,166.....

Description of the bargaining unit which petitioner claims is appropriate, Donnelly Garment Workers' Union, a voluntary unincorporated union representing all em

ployees of respondent below the grade of officer, superintendent, supervisor or anyone with the right to employ or discharge.....

Approximate number of employees in such unit, 1,166.

Classification of employees in such unit, giving approximate number of employees in each department or class, Operators 642; Miscel. Piece Workers 82; Hand Ironers 77; Folders 11; Examiners 41; Cutting Dept. 44; Dividers 15; Instructors & Work Distributors 44; Mechanics & Helpers 14; Designing & Pattern Workers 40; Bundle Boys 11; Clerical 62; Miscel. Time Workers 60; Porters & Maids 20; Watchmen 3;.....

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, All of them.....

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, International Ladies' Garment Workers' Union.....

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: International Ladies' Garment Workers' Union contends that Donnelly Garment Workers' Union is not the voluntary choice of said employees as their representative for collective bargaining, that it is therefore an illegal union under Secs. 7 & 9 of National Labor Relations Act, that the contracts made by it with the employer are therefore invalid, and that Donnelly Garment Workers' Union is not entitled to be the exclusive representative of all of said employees.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**DONNELLY GARMENT WORKERS' UNION.**

By Rose Todd,  
Chairman of the Executive Committee.  
Address—1008 Dwight Building, Kansas  
City, Missouri.

Subscribed and sworn to before me this 2nd day of June, 1939, at Kansas City, Mo.

**MYRTLE BONNELL,**  
(Notarial Seal) Notary Public, Jackson Co., Mo.

[fol. 493] (Board's Exhibit No. 1-QQQ.)

Case No. XVII-C-371.—Date 6/6/39.

(Motion of Intervener, International Ladies' Garment Workers' Union, to strike portions of Answer of Donnelly Garment Company, and granting thereof.)

The International Ladies' Garment Workers' Union moves to strike from the answer of the Donnelly Garment Company the following language contained in Paragraph 2 of their A subdivision of their answer, which is on Page 2 of said answer, the language to be stricken being the following:

“And have been” referring back to the word contracts, “determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union and other garment manufacturers in this part of the country,” for the reason that said allegation refers to facts, if they be facts, which are not in any way material to any of the charges contained in the complaint, and for the further reason that this tribunal is not bound by any conclusions that may have been reached by any other tribunal, particularly, by the Federal Court to which they refer.

This union further moves to strike from said answer, commencing with the second paragraph on Page 7 of said answer, the following language:

"During all of the times mentioned in the amended charge and the complaint filed herein, the International [fol. 494] Ladies' Garment Workers' Union, David Dubinsky, president, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, their agents and members, were engaged in an unlawful conspiracy to injure and destroy respondent's business for the sole purpose of forcing respondent in violation of the National Labor Relations Act to compel its employees against their wills to join the International Union and subject themselves to its domination and control. In furtherance of this conspiracy, the said International Union, its officers, agents and members, published or caused to be published false and libelous reports about respondent and the working conditions in its plant, and inaugurated and threatened to inaugurate secondary boycotts against respondent's customers and its merchandise in the various states of the union, and threatened to cause gangs of lawful persons to assault respondent's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets, assaulting them with knives, razor blades and other deadly weapons, which they perpetrated or caused to be perpetrated against the employees of other garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Memphis, Tennessee, and Dallas, Texas. The said International Union announced in the public press that it had set aside a fund of \$250,000 to finance its campaign against respondent."

Said union moves to strike that paragraph for the reason that the allegations, facts, allegations purporting to be facts which are in no way material or germane to the issues in the case before this Examiner; that by said allegations the respondent seeks to do the thing that certain persons who criticized the National Labor Relations Act are now attempting to do in Congress by way of amendment, that is, to interpret this Act as though it were one designed to prohibit violence and intimidation from any source. The purpose, of course, of the National Labor

[fol. 495] Relations Act is simple, that is, to guarantee the right to bargain collectively to employees and to declare as unfair labor practices certain conduct of employers which impedes that right. Now, this allegation is an effort to try this case as though it were being tried in a court of equity with the rule that "He who comes into court of equity should come with clean hands" or "He who seeks equity should do equity." There is no such interpretation ever been placed upon the National Labor Relations Act and as I say, it is well known, of course, to the Examiner, that there is now an effort on the part of certain people, whom I will describe as enemies of the Act, to amend it so as to permit just such evidence as they attempt to plead here to be offered.

Now, the said union further moves to strike the next paragraph on Page 8, which reads as follows:

"Respondent, on or about March 2, 1937, shortly after the International Union had publicly announced the opening of the drive against respondent and its employees, was notified by all of its employees, except 3, that they refused to acknowledge or accept the International Union as their representative for the purpose of collective bargaining. The International Union, knowing that it did not represent a single employee in respondent's plant, and knowing of the protests by the employees above mentioned, on or about March 9, 1937, sent to respondent a letter containing statements of alleged conditions of employment at respondent's plant which were known by the writers to be false and which were maliciously made. A conference was requested for the purpose of making a closed shop contract with respondent. Respondent determined that in the circumstances it could not legally contract with [fol. 496] the International and did not reply to said letter. The International, on or about March 15, 1937, began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company, and Gernes Garment Company, all of Kansas City, Missouri, for the purpose of compelling those companies to force their employees to join the International. At said time, the International did not represent a single employee of the Gernes Garment Company, and a very



small minority in the 2 other said companies. Agents of the International Union announced that the acts of violence perpetrated against the employees of said companies would not be perpetrated against the employees of respondent company and would be commenced against respondent employees after the above mentioned companies had capitulated and yielded to the demands of the union for a closed shop. The International further began the circulation throughout the country of the false and libelous statements contained in the above letter of March 9."

Said union moves to strike this paragraph for all the reasons stated in its motion to strike the previous paragraph, and for the reason that it seeks to interject into this hearing alleged happenings which are in no way germane or material to any of the issues here, and which of course, would cause the Examiner to go far afield and try a number of other labor controversies that they allege occurred at other plants and in other cities.

Said union further moves to strike from said answer, and from Page 10 thereof, the words commencing in the fifth line of said page, as follows: "And provides for—" referring back to the word contract, "for higher wages and more favorable conditions of employment than are contained in any contract with the International Union as entered into with other garment manufacturers in this part of the country," for the reason that the facts alleged [fol. 497] in that allegation are immaterial to the determination of the issues in this case.

Said union further moves to strike from said answer the following language, commencing on Page 10 of said answer, and commencing with the first full paragraph on said page, as follows:

"Respondent on July 5, 1937, instituted in the United States District Court for the Western Division of the Western District of Missouri a suit to enjoin the said International Union, David Dubinsky, president, Meyer Perlstein, Southwest Divisional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer,

officers, agents and members of said union from committing the unlawful acts of fraud and violence above described. A restraining order was thereupon issued by United States District Judge Otis enjoining the International, its officers, agents and members, from doing any of the unlawful acts complained of.

"The International Union and other defendants in said case requested a 3 judge court to hear the case. Honorable Arba S. Van Valkenburgh, United States Circuit Judge and Honorable Albert L. Reeves, United States District Judge, were thereupon designated to sit with Honorable Merrill E. Otis, United States District Judge, in the trial of the case. After an exhaustive hearing of evidence upon respondent's application for temporary injunction, Judge Van Valkenburgh and Judge Reeves in the majority opinion granted a temporary injunction and found the International, its officers and agents, to be guilty of the acts complained of in respondent's petition; copies of said opinions are hereto attached and marked Exhibit "A" and made a part of this answer as though set out in haec verbae. United States District Judge Otis stated in substance that respondent had made an overwhelming case [fol. 498] for an injunction, but has not complied with the technical requirements of the Norris-LaGuardia Act which prohibits the issuance of an injunction by a Federal Court unless said requirements have been complied with (21 Fed. Supp. 809). The said findings of fact and conclusions of law made by said 3-judge Court are attached hereto, marked Exhibit "A-1" and made a part of this answer as though set out in haec verbae. The International and other defendants appealed the judgment of said 3-judge Court to the Supreme Court of the United States, which Court held that the said suit was not one that required a 3-judge Court and remanded the case to the United States District Court for a trial before a single judge (304 U. S. 243: 58 F. Ct. Rep. 875)." For the reason that the matters alleged in said paragraphs are in no way material to the charge before this Examiner and complaint, and this Examiner is in no way bound by the opinions if they be the opinions alleged in this answer of the judges of the other tribunal, and for the reason that it is an effort to try that injunction suit before this Examiner, in this hearing.

Said union further moves to strike from said answer the following, commencing with the first full paragraph on page 12.

"Conferences between the Labor Board, respondent and the representative of the Donnelly Garment Workers' Union were later participated in by a representative of the International Union, and all matters alleged to be in controversy were then discussed, and the representative of the International Union in said conference admitted that the employees of the respondent company did not desire to belong to the International Union or be represented by it for the purpose of collective bargaining." For the reason that said facts as alleged, if true, are in no way material or germane to this hearing, and in no way binding upon this Examiner.

[fol. 499] Said union further moves to strike from said answer, the language commencing on Page 13, and contained in the last paragraph on said page, as follows:

"A trial of the above mentioned injunction suit was commenced March 2, 1939, and after an extended hearing of evidence, the District Court granted respondent a permanent injunction against the International Union, its officers, agents and members. The Court said of the International Union's raid against respondent: 'They were caught doing unlawful things and for that, they are being dealt with as lawbreakers.'

"The decree of the court, together with the findings of facts and conclusions of law are attached hereto, marked Exhibit "C" and made a part of this answer as though set out in haec verba," for the reason that said paragraphs are an effort, upon the part of the Donnelly Garment Company and its counsel, to retry that injunction suit before this Examiner, and for the further reason that the matters therein alleged are in no way material or germane to the issues here, and the decrees and findings of that court are in no way binding upon this court.

Said union further moves to strike from this answer the following paragraph, contained on page 14 of said answer:

"Respondent states that the circumstances surrounding the filing of the complaint herein and the constant attendance of the representatives of the Labor Board at the hearing for permanent injunction in the above-mentioned injunction case and their frequent consultations during the examination of respondent's witnesses with representatives of the International Union, further demonstrates that the Labor Board has assisted and is assisting [fol. 500] the International Union in its conspiracy against respondent company and is maintaining the proceedings herein in violation of any authority vested in the Labor Board by the National Labor Relations Act. Respondent states that the International Union instituted this proceeding as a part of its unlawful conspiracy above described, and in bad faith. That the Labor Board, having knowledge of all of the foregoing facts, must dismiss the proceeding in accordance with the spirit and plain provisions of the National Labor Relations Act, the Anti-Trust Laws of the United States, and the laws of the land"; for the reason that the allegations of said facts and if said facts were true, are in no way binding upon the Examiner in this case, or that they are not material to any of the issues before this Examiner; that what prejudice, if any, some other representative of the Labor Board might have would, of course, not affect the Examiner in this case, or in any way be binding on him, and it is an effort to cast an aspersion upon certain representatives of this Board, which even if the conduct described therein should be true, is in no way material to the issues herein involved.

Said union further moves to strike from page 26 of said answer the following language, commencing at the top of said page:

"Respondent further states that David Dubinsky, President of the International Ladies' Garment Workers' Union, testified under oath at the hearing for permanent injunction in the case, elsewhere referred to in this answer, that said I. L. G. W. U. was seeking a "closed shop" contract with respondent, under which respondent would be obligated to employ only members of the I. L. G. W. U. That in the contracts made by said International Union with other garment companies in Kansas City, Missouri,

[fol. 501] said I. L. G. W. U. (which is the same union that filed charges herein against respondent), closed shop provisions were inserted when said union did not represent any of the employees of the one company and did not represent a majority of the employees of such garment companies, and when a majority of said employees did not desire said I. L. G. W. U. to represent them. That in the face of sworn evidence of Perlstein and other witnesses adduced in the hearing of the above-mentioned injunction suit, which was heard by representatives of the Labor Board, said representatives have taken no steps to protect the rights of said employees which under the law it is their duty to protect", for the reason that the allegations therein contained refer to facts, if they be facts, that are in no way germane and material to the issues here, and for the reason that the National Labor Relations Act does not permit this Examiner to take into consideration any alleged law violation, coercion, intimidation on the part of the complaining union.

CLIF LANGSDALE,

JANE WALKER PALMER.

Motion to strike granted.

See Rulings of Trial Examiner—Bd's Exhibit 1-SSSS.

J. O. BATTEN.

[fol. 503] (Board's Exhibit No. 1-RRR.)

Case No. XVII-C-371.—Date 6/7/39.

(Amended Complaint.)

United States of America.

Before the National Labor Relations Board.  
Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers Union, Party to the Contract.



## Case No. XVII-C-371.

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk, and rayon low and medium-priced garments for women.

[fol. 504] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its garments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states.

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2 (5) of said Act.

4 A. Respondent, since on or about January 1, 1934, to July 5, 1935, intimidated, threatened, and coerced its employees and interfered with said employees' rights of self-organization, to form, join, and assist labor organizations, and to bargain collectively through representatives of their own choosing by:

(a) Dominating and interfering with the formation and administration of the Donnelly Loyalty League, since on or about February 12, 1935, and contributing financial and other aid thereto;

(b) Maintaining surveillance over members and meetings of the International Ladies' Garment Workers' Union at Musicians' Hall, Kansas City, Missouri, in March 1934, at Eagles' Hall, Kansas City, Missouri, in December 1934, at the homes of Glynn Brooks and Marion Burns in June 1934, and the offices of I. L. G. W. U. at 813 Walnut Street, Kansas City, Missouri, and at other places unknown;

[fol. 505] (c) Discharging from its employ in 1934 and 1935 the following named employees:

Ellen Fry  
Glynn Brooks  
Tillie Shirley  
Pauline Lutz  
Mamie Tubbesing  
Lillian Wales  
Nora McKee  
Ollie Thompson  
Clara Enloe

Thelma Owens  
Lillian Rutherford  
Lou Perkins  
Gladys Eldridge  
Virginia Stroup  
Frances Reidel  
Loretta Sisson  
Minnie Liles  
Edith Alexander

because of their membership and activities in behalf of the I. L. G. W. U.

(d) Attempting to prevail upon members of the I. L. G. W. U. in its employ to resign from said union;

(e) Issuing written and oral statements designed and calculated to discourage membership in the I. L. G. W. U.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this com-

plaint, has dominated and interfered in the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, and encourage membership into the Donnelly Garment Workers' Union particularly in the months of March, April, and May 1937 and thereafter, on respondent's time and on respondent's property and at respondent's pay and at its expense.

(b). Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without loss of pay or [fol. 506] other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, de-

priviing its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is [fol. 507] thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2); above, did discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike, on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meani of Section 8 (1) of said Act.

11. Respondent, since July 5, 1935, by the acts set forth in paragraphs five (5), and eight (8), above, by interfering with, coercing, intimidating, and threatening its employees to refrain from becoming members or continuing membership in I. L. G. W. U.; by keeping members and meetings of I. L. G. W. U. under surveillance; by openly manifesting bitter hostility to the I. L. G. W. U.; by acts and conduct of supervisory and other employees; by the issuance of written and oral statements designed and calculated to discourage membership in the I. L. G. W. U., including statements made by the president of respondent at a meeting on the property of the company called by officials of respondent on or about March 18, 1937; by inducing and compelling employees to sign a petition declaring their [fol. 508] loyalty to respondent on or about March 2, 1937; by showing preference and favoritism to the Donnelly Garment Workers Union since its inception on or about April 27, 1937; by indicating to employees that respondent favored their affiliation with that organization; by executing a closed-shop contract, making membership therein a condition of employment; by depriving its employees of the opportunity of joining an organization of their own choosing; by discriminating in the allotment of work of members of sympathizers of the I. L. G. W. U., by supervisory and other employees questioning employees individually and collectively with regard to their union activity and prejudices; by instigating, allowing, or permitting violent demonstrations upon its time and property on or about April 23, 1937, against Fern Sigler and Sylvia Hull, members of the I. L. G. W. U., has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations of their own choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates, and perpetuates continuing intimidation, interference, restraint, and coercion by respondent in violation of Section 8 (1), (2), and (3) of said Act and is, therefore, invalid, void, and of no effect.



13. That aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and at a time when the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void, and of no effect.

14. That, by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void, and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void, and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

[fol. 510] 17. The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of said Act.

(Signature omitted.)

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[fol. 511] (Board's Exhibit 1-TTT.)

Case No. XVII-C-371.—Date 6/7/39.

(Motion of Respondent, Donnelly Garment Company, to strike portions of Amended Complaint.)

Comes now the above named repondent and without admitting the truth of any of the allegations contained in Paragraph 4A and the subparagraphs thereof of the Amended Complaint filed herein on June 7, 1939, and moves the Examiner to strike said paragraph 4A and each and all of the subparagraphs (a), (b), (c), (d) and (e) thereof, and paragraph 5, subparagraph C, and each and every allegation therein contained, and to dismiss said Paragraph 4A and subparagraphs and Paragraph 5, subparagraph C, and each and all of the charges contained in said Paragraph 4A and the subparagraphs, and Paragraph 5, subparagraph C thereof, for and upon the following grounds and reasons, to-wit:

1. Because the matters and things charged and alleged in said Paragraphs and in the subparagraphs thereof occurred prior to the passage of the National Labor Relations Act and each and all of said things alleged to have been done, if same were done, were lawful at the times they are alleged to have been done.

2. Because each and all of said acts and things alleged to have been done by respondent are remote and wholly immaterial, irrelevant and incompetent in this proceeding [fol. 512] charging respondent with unfair labor practices under the National Labor Relations Act because said alleged acts are alleged to have been done prior to the

passage of said National Labor Relations Act and approximately five years prior to the filing of the complaint herein.

3. Because any hearing or determination by the Examiner or the National Labor Relations Board of the matters charged in this complaint, based upon the acts alleged in said paragraphs and the subparagraphs thereof, is and would be beyond the jurisdiction of the Examiner and the National Labor Relations Board, and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

4. Because the charges and allegations contained in said Paragraphs and the subparagraphs thereof constitute an attempt to make the National Labor Relations Act retroactive and an attempt to make acts unlawful which were lawful at the time same are charged to have been done, and to charge respondent with acts as unlawful which were not unlawful at the time respondent is charged with doing same in violation of Section 9 of Article I of the Constitution of the United States, providing that no bill of attainder or ex post facto law shall be passed by Congress, and if the National Labor Relations Act be so applied as to permit the Labor Board to hear and determine said charges and matters, it is unconstitutional and void, as controvening said Section 9 of Article I and denying respondent due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

5. Because the allegations contained in said paragraphs above referred to are too vague, to apprise respondent [fol. 513] of the acts of unfair labor practice purported to be charged.

Dated the 7th day of June, 1939.

JAMES A. REED,  
R. J. INGRAHAM,  
Attorneys for Respondent.

[fol. 515] (Board's Exhibit No. 1-UUU.)

Case No. XVII-C-371.—Date 6/12/39.

(Motion of Intervener to strike portions of Amended Complaint.)

Now comes the intervener and moves to strike all of paragraph Four A, including all the sub-paragraphs thereof of the amended complaint filed herein on June 7, 1939, for the reason that all of the matters and things therein charged and alleged are charged to have occurred at a time too remote to be material to any of the issues involved in the present hearing.

GOSSETT, ELLIS, DIETRICH  
& TYLER,

Attorneys for Intervener.

[fol. 517] (Board's Exhibit No. 1-XXX.)

Case No. XVII-C-371.—Date 6/6/39.

(Motion of Intervener, Donnelly Garment Workers' Union, for Continuance.)

Now comes the Donnelly Garment Workers' Union, named in the complaint herein as party to the contract, and moves that the hearing in the above entitled action be continued for the following reasons:

(1) The Donnelly Garment Workers' Union has filed motion with the National Labor Relations Board asking that a fair and secret election of the employees be had under the direction of said Board for the purpose of determining the genuine and free will choice of the employees of a labor organization and of a collective bargaining agency for such employees. Such election would determine many if not all of the points of controversy involved in this hearing, and such hearing should not be held until after such election if at all.

(2) The charge filed in this matter does not comply with the regulations of the National Labor Relations Board and especially with Article 2, Section 4 (c) requiring a clear and concise statement of the facts construing the

alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence, and the complaint based [fol. 518] thereon is insufficient as based on such charge and insufficient in not informing the Donnelly Garment Workers' Union of the charges against it, if any, and of the ultimate facts of evidence which it may be called upon to meet, and which it is entitled to meet before its rights as an organization and in and to its contract with its employers can be validly passed upon.

Wherefore Donnelly Garment Workers' Union moves that the hearing be continued until such election has been held and until the charge and complaint are amended and cured of the defects herein specified.

GOSSETT, ELLIS, DIETRICH  
& TYLER,

Attorneys for Donnelly Garment  
Workers' Union.

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[fol. 520] (Board's Exhibit No. 1-ZZZ.)

Case No. XVII-C-371.—Date 6/12/39.

(Motion of National Labor Relations Board to amend Complaint.)

Comes now Daniel J. Leary, Attorney, National Labor Relations Board, and moves to amend the complaint in the above matter in the following particulars, to wit:

To strike paragraph eleven (11) of complaint, identified as Board's Exhibit No. 1-RRR, and to insert in lieu thereof the following, to be known as paragraph 11:

"11. Respondent, since July 5, 1935, has interfered with, restrained, coerced, intimidated and threatened its employees to refrain from becoming members or continuing membership in the I. L. G. W. U. and has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by:

(a) the acts set forth in paragraphs five (5) and eight (8), above,



(b) discharging Fern Sigler from its employ on or about April 23, 1937,

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde, supervisory employees of respondent, to Sylvia Hull, an employee, on or about April 23, 1937,

[fol. 521] (d) statements of Mrs. Ella Mae Hyde to May Fike, an employee, on or about April 23 and April 26, 1937,

(e) statements of Mrs. James A. Reed, president of respondent, on or about March 18, 1937, to a meeting of employees at the plant of respondent,

(f) statements of Dewey Atchinson, a supervisory employee, regarding the union affiliation of Fern Sigler on or about April 27, 1937,

(g) public statements of James A. Reed on or about October 1936 regarding members of the I. L. G. W. U. and its officials,

(h) causing or permitting rumors to be circulated at its plant in the spring of 1937 that respondent's employees would be subjected to violence, intimidation or assault at the hands of the I. L. G. W. U. or its members or agents,

(i) causing, allowing or permitting in the spring of 1937 a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred, and contempt in the minds of the employees for the I. L. G. W. U.,

(j) chartering busses to transport employees to and from their work, beginning on or about March 18, 1937, and issuing employment cards or passes to employee in order to create fear, hatred, and contempt in the minds of its employees with reference to the I. L. G. W. U.,

(k) keeping members and all meetings of the I. L. G. W. U. in Kansas City, Missouri since July 5, 1935, under surveillance,

(l) inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting

and causing said petition to be circulated in its plant [fol. 522-532] during working hours on or about March 2, 1937,

(m) inducing, allowing, or permitting all instructors and other supervisory and confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration,

(n) discriminating through their instructors in the allotment of work to I. L. G. W. U. members, Sylvia Hull and May Fike, in April 1937, :

(o) refusing to recall or assign work when requested to Virginia Stroup in October 1935, Glynn Brooks and Lillian Wales in January 1938, all members of the I. L. G. W. U.,

(p) refusing to recall or assign work when requested to

Ellen Fry  
Glynn Brooks  
Tillie Shirley  
Pauline Lutz  
Mamje Tubbesing  
Lillian Wales  
Nora McKee  
Ollie Thompson  
Clara Enloe

Thelma Owens  
Lillian Rutherford  
Lou Perkins  
Gladys Eldridge  
Virginia Stroup  
Frances Reidel  
Loretta Sisson  
Minnie Liles  
Edith Alexander

all members of the I. L. G. W. U. on or about July 23, 1935,

(q) instigating, causing, allowing, and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the I. L. G. W. U.,

(r) granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union, making membership therein a condition of employment, and

(s) various other similar acts and conduct.

By all the acts above, respondent has interfered with, restrained, and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join, and assist labor organizations and [fol. 533] to bargain collectively through representatives of their own choosing, and did thereby engage and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act."

DANIEL J. LEARY,  
Attorney.

[fol. 534] (Board's Exhibit No. 1-AAAA.)

Cas No. XVII-C-371.—Date 6/12/39.

(Motion of Respondent, Donnelly Garment Company, to strike portions of Amended Complaint.)

Comes now the respondent Donnelly Garment Company and moves the Examiner to strike the following portions of paragraph 11 of the Amended Complaint for each and all of the reasons hereinafter set forth, to wit:

1. That subparagraph (c) of said paragraph 11 should be stricken for the reason that it does not set forth the nature of the statements alleged to have been made, or show that said statements have any bearing upon the charge, or constitute any violation of the National Labor Relations Act, and are vague and indefinite.

2. That subparagraph (d) of said paragraph 11 should be stricken for the same reasons.

3. That paragraph (e) of said paragraph 11 should be stricken for the same reasons.

4. That subparagraph (f) of said paragraph 11 should be stricken for the same reasons.

[fol. 535] 5. That subparagraph (g) of said paragraph 11 should be stricken for the same reasons.

6. That subparagraph (h) of said paragraph 11 should be stricken for the reason that it fails to state the names of any persons connected with respondent who it is alleged caused or permitted the alleged rumors to be circulated.

7. That subparagraph (k) of said paragraph 11 should be stricken for the reason that it does not specify the dates of the meetings which are alleged to have been kept under surveillance and the names of the officers or employees of respondent who, it is alleged, did such acts, or set forth the names of the members of the I. L. G. W. U. who were kept under surveillance; and for the further reason that the allegations of said paragraph constitute no charge violating the National Labor Relations Act.

8. That subparagraphs (o) and (p) of said paragraph 11 should be stricken for the reason that said subparagraphs do not state or constitute any charge or acts violating the National Labor Relations Act; and for the further reason that it does not appear therein that any of the persons named therein were employees of respondent; and because said subparagraphs do not state any facts showing that the persons therein named were entitled to be recalled or to have work assigned to them; and for the further reason that said subparagraph (p) is an attempt to replead the matters and charges contained in paragraph 4A of the Amended Complaint which was stricken out of the complaint by order of the Examiner.

[fol. 536] 9. That subparagraph (s) of said paragraph 11 should be stricken for the reason that it is so vague, indefinite and uncertain as not to charge any violation of the National Labor Relations Act and not sufficient to apprise the respondent of what it is charged with.

REED & INGRAHAM,  
Attorneys for Respondent.

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[fol. 538] (Board's Exhibit No. 1-BBBB.)

Case No. XVII-C-371.—Date 6/12/39.

(Answer of Respondent, Donnelly Garment Company, to Amended Complaint.)

United States Of America  
Before The National Labor Relations Board  
Seventeenth Region

## In the Matter of

Donnelly Garment Company,  
and  
International Ladies' Garment Workers' Union,  
and  
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Company, respondent in the above entitled matter and for answer to the amended complaint states:

1. Respondent reiterates and adopts all the allegations contained in its original answer herein, reserving, however, all objections and rights to object to the jurisdiction of the Labor Board and all objections and rights to object to the competency, authority, and good faith of the Board in issuing the amended complaint herein and all objections and rights to object to the sufficiency of said amended complaint and to the amended charge upon which said amended complaint is based and to the competency, relevancy and materiality of the allegations contained in said amended complaint.
2. Respondent states that the allegations contained in Paragraph 11 are vague, indefinite and uncertain in that they do not state the facts charging unfair labor practices under Section 8 (1) of the National Labor Relations Act and do not sufficiently advise respondent of the acts charged [f.l. 539] to require an answer, and respondent makes the following answer for the reason that under the rules of the National Labor Relations Board unless matters are specifically denied the Board considers the same admitted.
3. Further answering said Amended Complaint and particularly Paragraph 11, respondent denies each and all the allegations therein contained and specifically denies that since July 5, 1935, it has interfered with, restrained, coerced, intimidated and threatened its employees to refrain from becoming members or continuing membership in the ILGWU and/or has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by



(a) the acts set forth in Paragraphs 5 and 8 of the Amended Complaint filed herein;

(b) discharging Fern Sigler from its employ on or about April 23, 1937;

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde to Sylvia Hull on or about April 23, 1937;

(d) statements of Mrs. Ella Mae Hyde to May Fike on or about April 23 and April 26, 1937;

(e) statements of Mrs. James A. Reed on or about March 18, 1937, at the plant of respondent;

(f) statements of Dewey Atchison regarding the union affiliation of Fern Sigler on or about April 27, 1937;

(g) public statements of James A. Reed on or about October, 1936 regarding members of the ILGWU and its officers;

(h) causing or permitting rumors to be circulated at its plant in the spring of 1937 that respondent's employees would be subjected to violence, intimidation or assault at [fol. 540] the hands of the ILGWU or its members or agents.

Respondent asserts that the International Union, its officers, agents and members, as a part of their unlawful conspiracy to injure and destroy respondent's business publicly announced that they would use against respondent and its employees the same unlawful acts of force and violence, including the assaulting of women workers with fists and deadly weapons, as they used against other garment manufacturers and their employees in Kansas City, Missouri during the spring of 1937; that the said International Union, its officers, agents and members, caused said threats to be communicated to the employees of respondent for the very purpose of accomplishing the conspiracy and, but for the issuance of injunctive processes by the Federal Court for the Western Division of the Western District of Missouri (referred to in Exhibits A, A1 and C), the said threatened acts would have been per-

petrated against respondent and its employees as a means to compel respondent to violate the rights guaranteed to its employees under the provisions of the National Labor Relations Act.

(i) Causing, allowing or permitting, in the spring of 1937, a loud speaker system in its cafeterias to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred and contempt in the minds of the employees for the ILGWU.

(j) Chartering busses to transport employees to and from their work beginning on or about March 18, 1937 and issuing employment cards or passes to employees in order to create fear, hatred and contempt in the minds of its employees with reference to the ILGWU.

[fol. 541] Respondent asserts that it did charter busses to transport employees for the purpose of attempting to protect said employees against the threatened violence of the International Union, its officers, agents and members, as described in Section "B" of this Answer, and Section "D", subsection ~~13~~, subparagraph (h). The International Union, its officers, agents and members, at the said time mentioned was engaged in an unlawful conspiracy to injure and destroy respondent's business in violation of the Anti-Trust laws of the United States. Respondent instituted an injunction suit on July 5, 1937, to enjoin the International Union, its officers, agents and members from engaging in the unlawful acts described in Section B of this Answer. That the Federal Court of the United States for the Western Division of the Western District of Missouri has twice found and determined that the International Union, its officers, agents and members, were engaging in the said unlawful conspiracy as aforesaid (Exhibits A, A1 and B), and that respondent has not violated any provisions of the National Labor Relations Act but complied therewith in all respects.

(k) Keeping members and all meetings of the ILGWU in Kansas City, Missouri, since July 5, 1935, under surveillance.

(l) Inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937.

Respondent asserts that said petition was circulated by the voluntary action of the employees and without knowledge on the part of respondent on account of the public [fol. 542] announcements of the ILGWU and its officers in the metropolitan press that they were about to institute their campaign to force the unionization of respondent's plant, said announcements being in furtherance of the said conspiracy set forth in Section B of this Answer.

(m) Inducing, allowing, or permitting all instructors or supervisors or confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration.

(n) Discriminating through instructors in the allotment of work to ILGWU members, Sylvia Hull and May Fike, in April, 1937.

(o) Instigating, causing, allowing and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike.

(r) Granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union making membership therein a condition of employment.

(s) Various other similar acts and conduct.

Respondent specifically denies paragraph (s) for the reason that under the rules of the Labor Board respondent will be in a position of having admitted allegations unless they are specifically denied. However, respondent asserts that the Labor Board has no jurisdiction to hear or determine any matters construed to be charged in paragraph (s) for the reason that the same are not specifically [fol. 543] set forth and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Respondent denies by all or any of the acts set forth in Paragraph 11 it has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join and assist labor organizations and to bargain collectively through representatives of their own choosing and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act.

Respondent further states that during all of the times mentioned in Paragraph 11 the International Union, its officers, agents and members were engaged in the said unlawful conspiracy against respondent set forth in Section B of this Answer, and the said matters set forth in said Section B of this Answer are by reference made a part specifically of respondent's Answer to Paragraph 11 as though set out in haec verbae.

Respondent is not answering subparagraphs (o) and (p) of Paragraph 11 for the reason that the Examiner has reserved his rulings to strike said paragraphs from the Amended Complaint.

REED & INGRAHAM,  
Attorneys for Respondent.

[fol. 545] (Board's Exhibit No. 1-CCCC.)

Case No. XVII-C-371.—Date

(Answer of Intervener, Donnelly Garment Workers' Union,  
to Amended Complaint.)

United States Of America

Before The National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company,  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union, Party to the Contract.

## Case No. XVII-C-371.

Comes now Donnelly Garment Workers' Union, Intervener, and for answer to amended complaint states

(1) Intervener adopts all the allegations contained in its original answer herein and reasserts and reiterates them in this answer to the amended complaint.

(2) Denies that the employes of Donnelly Garment Company or Donnelly Garment Sales Company were interfered with, restrained, coerced, intimidated, or threatened by the employer, its officers or agents in connection with refraining from becoming members of the International Ladies' Garment Workers' Union or forming, joining or becoming members of the Donnelly Garment Workers' Union.

(3) Specifically denies that the employer has interfered with, restrained, coerced, intimidated or threatened the employes or any of them in connection with refraining from membership in the International Ladies' Garment Workers' Union or in forming or joining the Donnelly Garment Workers' Union in the manner set forth in or by the acts set forth in sub-paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (q), (r), (s) of new paragraph 11.

(4) Intervener does not at this time answer sub-[fol. 546] paragraphs (o) and (p) for the reason that the examiner has reserved his ruling on motion to strike said subparagraphs from the amended complaint.

GOSSETT, ELLIS, DIETRICH  
& TYLER,

Attorneys for Intervener.

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[fol. 548] (Board's Exhibit No. 1-FFFF.)

Case No. XVII-C-371.—Date 6/30/39.

(Motion of Respondent, Donnelly Garment Company, to dismiss Complaint, and denial thereof:)

Comes now the above named respondent, Donnelly Garment Company, and moves the Trial Examiner to dismiss the complaint against respondent in its entirety and to



dismiss each and every paragraph and charge therein contained and/or to find and rule that the Board has not made a case against respondent upon said complaint or upon any of the several charges contained therein or adduced any substantial evidence to support said complaint or any of said charges, and moves the Examiner to discharge the respondent; the grounds of this motion being that the Board has introduced no substantial evidence sufficient to support a finding against respondent upon any of the charges in the complaint, but that said evidence is wholly speculative and conjectural and constitutes mere suspicion.

REED & INGRAHAM,  
Attorneys for Respondent.

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See Rulings of Trial Examiner in the Inter. Report.  
Motion denied.

J. C. BATTEN,  
Trial Examiner.

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[fol. 549] (Board's Exhibit No. 1-GGGG.)

Case No. XVII-C-371.—Date 6/30/39.

(Motion of Respondent, Donnelly Garment Company, to dismiss certain Paragraphs of Amended Complaint, and Ruling thereon.)

Comes now the above named respondent Donnelly Garment Company and makes the following separate motions to dismiss and motions to strike in the above entitled matter:

#### I.

Respondent moves the Trial Examiner to dismiss paragraph 5(a) of the complaint for the reason that the Board has introduced no substantial evidence sufficient to support a finding sustaining said paragraph 5(a).

#### II.

Respondent moves the Trial Examiner to dismiss paragraph 5(b) of the complaint for the reason that the Board

his introduced no substantial evidence sufficient to sustain the allegations and charges contained in said paragraph 5(b).

[fol. 550]

### III.

Respondent moves the Trial Examiner to dismiss paragraph 5(c) of the complaint for the reason that the Board has introduced no substantial evidence sufficient to support a finding sustaining the allegations and charges contained in paragraph 5(c), and for the further reason that the Board has introduced no evidence showing any connection between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, or any evidence that the respondent dominated the Donnelly Loyalty League or through that League dominated the Donnelly Garment Workers' Union, or that the Donnelly Garment Workers' Union succeeded the Loyalty League or was a continuation of the Loyalty League.

### IV.

Respondent moves the Trial Examiner to dismiss paragraph 5(d) of the complaint for the reason that the Board has introduced no evidence showing that the closed shop agreement made with the Donnelly Garment Workers' Union was entered into for the purposes alleged in said paragraph 5(d) and for the further reason that the Board has introduced no substantial evidence sufficient to sustain the charges or allegations contained in said paragraph 5(d).

### V.

Respondent moves the Trial Examiner to dismiss paragraph 6 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations and charges contained in said paragraph 6.

### VI.

Respondent moves the Trial Examiner to dismiss paragraph 7 of the complaint for the reason that the Board [fol. 551] has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 7.

## VII.

Respondent moves the Trial Examiner to dismiss paragraph 8 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 8.

## VIII.

Respondent moves the Trial Examiner to dismiss paragraph 9 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 9.

## IX.

Respondent moves the Trial Examiner to dismiss paragraph 10 of the complaint for the reason that the Board has not introduced substantial evidence to sustain the allegations or charges contained in said paragraph 10.

## X.

Respondent moves the Trial Examiner to dismiss paragraph 11(a) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(a).

## XI.

Respondent moves the Trial Examiner to dismiss paragraph 11(b) of the complaint for the reasons set forth in the preceding paragraph hereof.

## XII.

Respondent moves the Trial Examiner to dismiss paragraph 11(c) of the complaint for the reason that the [fol. 552] Board has failed to introduce any evidence to sustain the allegations or charges set forth in said paragraph 11(c).

## XIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(d) of the complaint for the reason that the Board had not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(d).

## XIV.

Respondent moves the Trial Examiner to dismiss paragraph 11(e) of the complaint for the reason that the evidence introduced by the Board as to the statements of Mrs. James A. Reed do not sustain the allegations or charges contained in said paragraph 11(e).

## XV.

Respondent moves the Trial Examiner to dismiss paragraph 11(f) of the complaint for the reason that the Board has introduced no evidence sustaining the allegations or charges contained in said paragraph 11(f).

## XVI.

Respondent moves the Trial Examiner to dismiss paragraph 11(g) of the complaint for the reason that the testimony introduced by the Board as to the public statements of James A. Reed failed to sustain the allegations of said paragraph 11(g), and because the Board has introduced no evidence connecting said alleged public statements of James A. Reed with the employees of the Donnelly Garment Company, or shown that such public statements interfered with, restrained, coerced, intimidated, or threatened said employees to refrain from becoming members or continuing membership in the I. L. G. W. U., or encouraged, promoted, solicited or compelled membership in the Donnelly Garment Workers' Union.

[fol. 553].

## XVII.

Respondent moves the Trial Examiner to dismiss paragraph 11(i) of the complaint for the reason that the testimony introduced by the Board fails to show that the respondent caused, allowed or permitted the installation of said loud speaker system in its cafeteria or that the same was used for the purposes set forth in said paragraph 11(i), and for the further reason that the Board has failed to introduce any substantial evidence supporting the allegations or charges of said paragraph 11(i).

## XVIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(k) of the complaint for the reason that the Board

has introduced no evidence supporting the allegations or charges contained in said paragraph 11(k).

#### XIV.

Respondent moves the Trial Examiner to dismiss paragraph 11(l) of the complaint for the reason that the Board has introduced no evidence sustaining the allegations or charges contained in said paragraph 11(l).

#### XV.

Respondent moves the Trial Examiner to dismiss paragraph 11(m) of the complaint for the reasons set forth in the preceding paragraph.

#### XVI.

Respondent moves the Trial Examiner to dismiss paragraph 11(n) of the complaint for the reasons set forth in the preceding paragraph hereof.

#### XVII.

Respondent moves the Trial Examiner to dismiss paragraph 11(o) of the complaint for the reason that the Board [fol: 554] has introduced no evidence sustaining the allegations of said paragraph 11(o) as to Glynn Brooks.

#### XVIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(p) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(p) as to Ellen Fry, Glynn Brooks and Mamie Tubbsing, or any of them.

#### XIX.

Respondent moves the Trial Examiner to dismiss paragraph 11(q) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(q).

#### XX.

Respondent moves the Trial Examiner to dismiss paragraph 11(r) of the complaint for the reason that the evi-



dence introduced by the Board as to the provisions of the contract of May 22, 1937, does not show that same were made or included for any unlawful purpose or for any of the purposes charged in paragraph 11(r) of the complaint.

### XXI.

Respondent moves the Trial Examiner to dismiss paragraph 12 of the complaint for the reason that the Board has not introduced any substantial evidence sustaining the allegations or charges contained in said paragraph 12.

### XXII.

Respondent moves the trial examiner to dismiss paragraph 13 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 13.

[fol. 555]

### XXIII.

Respondent moves the Trial Examiner to dismiss paragraph 14 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 14.

### XXIV.

Respondent moves the Trial Examiner to dismiss paragraph 15 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 15.

### Motion To Strike.

Respondent moves the Trial Examiner to strike all evidence introduced by the Board upon each of the paragraphs of the complaint which are dismissed by the Trial Examiner.

**REED & INGRAHAM,**  
Attorneys for Respondent.

See Rulings of the Trial Examiner in Inter. Report.

**J. S. BATTEN,**  
Trial Examiner.

[fol. 557] (Board's Exhibit No. 1-KKKK.)

Case No. XVII-C-371.—Date 7/13/39.

Amended Complaint.

United States of America

Before the National Labor Relations Board  
Seventeenth Region,

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its amended complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk, and rayon low and medium-priced garments for women.

[fol. 558] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its gar-

ments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states.

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2(5) of said Act.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this amended complaint, has dominated and interfered in the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, and encourage membership into the Donnelly Garment Workers' Union particularly in the months of March, April, and May 1937 and thereafter, on respondent's time and on respondent's property and at respondent's pay and at its expense.

[fol. 559] (b) Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without

loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, depriving its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has [fol. 560] contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2), above, did

discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike, on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

11. Respondent, since July 5, 1935, has interfered with, restrained, coerced, intimidated, and threatened its employees to refrain from becoming members or continuing [fol. 561] membership in the I. L. G. W. U. and has encouraged, promoted, solicited, and compelled membership in the Donnelly Garment Workers Union by:

(a) the acts set forth in paragraphs five (5) and eight (8), above,

(b) discharging Fern Sigler from its employ on or about April 23, 1937,

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde, supervisory employees of respondent, to Sylvia Hull, an employee, on or about April 23, 1937,

(d) statements of Mrs. Ella Mae Hyde to May Fike, an employee, on or about April 23 and April 26, 1937,

(e) statements of Mrs. James A. Reed, president of respondent, on or about March 18, 1937, to a meeting of employees at the plant of respondent,



(f) statements of Dewey Atchinson, a supervisory employee, regarding the union affiliation of Fern Sigler on or about April 27, 1937,

(g) public statements of James A. Reed on or about October 1936 regarding members of the I. L. G. W. U. and its officials,

(g-1) statement of Alex Green in March 1937 to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union,

(i) causing, allowing or permitting in the spring of 1937 a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers Union and instill fear, hatred, and contempt in the minds of the employees for the I. L. G. W. U.,

(k) keeping members and all meetings of the I. L. G. W. U. in Kansas City, Missouri since July 5, 1935, under surveillance,

[fol. 562] (l) inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937,

(m) inducing, allowing, or permitting all instructors and other supervisory and confidential employees to become members of the Donnelly Garment Workers Union and to be active in its affairs and administration,

(n) discriminating through their instructors in the allotment of work to I. L. G. W. U. members, Sylvia Hull and May Fike, in April 1937,

(o) refusing to recall or assign work when requested to Glynn Brooks in January 1938, a member of the I. L. G. W. U.,

(p) refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks and Mamie Tubbesing, all members of the I. L. G. W. U., on or about July 23, 1935,

(q) instigating, causing, allowing, and permitting its employees to engage in a violent demonstration on its time

and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the I. L. G. W. U.,

(r) granting a contract on or about May 22, 1937, to the Donnelly Garment Workers Union, making membership therein a condition of employment, and

(s) various other similar acts and conduct.

By all the acts above, respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations and to bargain collectively through representatives of their own [fol. 563] choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates, and perpetuates continuing intimidation, interference, restraint, and coercion by respondent in violation of Section 9 (1), (2), and (3) of said Act and is, therefore, invalid, void, and of no effect.

13. That the aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and at a time when the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void, and of no effect.

14. That, by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within

the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void, and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of [fol. 564] employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void, and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of said Act.

Wherefore, the National Labor Relations Board issues its amended complaint against the Donnelly Garment Company, respondent herein.

(Signature omitted.)

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[fol. 565] (Board's Exhibit No. 1-LLLL.)

Case No. XVII-C-371.—Date 7/13/30.

(Answer of Respondent, Donnelly Garment Company, to Amended Complaint.)

United States of America

Before the National Labor Relations Board,  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Company, respondent in the above entitled matter and for answer to the amended complaint filed herein on July 12, 1939, marked Board's Exhibit 1-KKKK, states:

1. Respondent reiterates and adopts all the allegations contained in its original answer herein, reserving, however, all objections and rights to object to the jurisdiction of the Labor Board and all objections and rights to object to the competency, authority and good faith of the Board in issuing the amended complaint herein and all objections and rights to object to the sufficiency of said amended complaint and to the amended charge upon which said amended complaint is based and to the competency, relevancy and materiality of the allegations contained in said amended complaint and without waiving any of its motions to dismiss or strike.

2. Respondent states that the allegations contained in Paragraph 11 are vague, indefinite and uncertain in that they do not state the facts charging unfair labor practices under Section 8 (1) of the National Labor Relations Act [fol. 566] and do not sufficiently advise respondent of the acts charged to require an answer, and respondent makes the following answer for the reason that under the rules of the National Labor Relations Board unless matters are specifically denied the Board considers the same admitted.

3. Further answering said Amended Complaint and particularly Paragraph 11, respondent denies each and all the allegations therein contained and specifically denies that since July 5, 1935, it has interfered with, restrained, coerced, intimidated or threatened its employees to refrain from becoming members or continuing membership in the

ILGWU and/or has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by

(a) the acts set forth in Paragraphs 5 and 8 of the said Amended Complaint filed herein;

(b) discharging Fern Sigler from its employ on or about April 23, 1937;

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde to Sylvia Hull on or about April 23, 1937;

(d) statements of Mrs. Ella Mae Hyde to May Fike on or about April 23 and April 26, 1937;

(e) statements of Mrs. James A. Reed on or about March 18, 1937, at the plant of respondent;

(f) statements of Dewey Atchison regarding the union affiliation of Fern Sigler on or about April 27, 1937; respondent denies that said Dewey Atchison was on or about April 27, 1937, a supervisory employee.

[fol. 567] (g) public statements of James A. Reed on or about October, 1936 regarding members of the ILGWU and its officials;

(g-1) alleged statement of Alex Green in March, 1937, to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union.

Further answering said Amended Complaint and particularly Paragraph 11 (g-1), respondent states that said alleged statement of Alex Green in March, 1937, to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union was as follows, to wit: (page 1624-25, testimony of Elsa Graham Greenhaw)

"Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

A. Yes, I did.

Q. Do you remember any particular conversation that you had with him?

A. We had a short discussion of the strike that was being held at Gordon's at that time.

Q. What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?



A. Well, I merely said something about the strike. He said he would advise me not to go near there because it was dangerous, that the Union people had weapons of various kinds on them and were injuring anyone who came near, and the whole thing was being run by communists."

Respondent, for further answer to said alleged charge, states that same shows on its face that it does not prove or tend to prove any issue in this case or any charge in the Complaint against respondent.

Respondent further states that Meyer Perlstein, Southwest Regional Director of the ILGWU was in charge of [fol. 568] the strikes at the Gernes, Gordon and Missouri strikes referred to; that Meyer Perlstein caused members of his Union to take possession of the entrances to the building in which said plants are located and engage in a sitdown strike, thereby preventing ingress and egress to the plants of said companies; that said Meyer Perlstein caused acts of violence on the part of the members of his Union to be engaged in against any employees of said companies who sought to go to work, including the tearing of their clothes, cutting them with knives and razor blades, striking them with other weapons; that said Meyer Perlstein has caused similar acts of violence to be engaged in by his agents in the cities of Memphis, Tennessee, and Dallas, Texas, and that in said cities he has publicly stated that strikes can only be won with violence and other remarks calculated to encourage revolution in the country; that all of said activities and remarks are un-American and intended to incite class hatred and destroy property rights contrary to American principle of government and in accordance with the doctrines of communism; that said activities above referred to by Meyer Perlstein were ratified and approved by the General Executive Board of the ILGWU and its president David Dubinsky.

(i) causing, allowing or permitting, in the spring of 1937, a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred and contempt in the minds of the employees for the ILGWU.

(k) keeping members and all meetings of the ILGWU in Kansas City, Missouri, since July 5, 1935, under surveillance.

[fol. 569] (l) Inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937.

Respondent asserts that said petition was circulated by the voluntary action of the employees and without knowledge on the part of respondent on account of the public announcements of the ILGWU and its officers in the metropolitan press that they were about to institute their campaign to force the unionization of respondent's plant, said announcements being in furtherance of the said conspiracy set forth in Section B of this Answer.

(m) Inducing, allowing, or permitting all instructors or supervisors or confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration.

Respondent denies that instructors employed by it are supervisory or confidential employees.

(n) Discriminating through instructors in the allotment of work to ILGWU members, Sylvia Hull and May Fike, in April, 1937.

(o) Refusing to recall or assign work when requested to Glynn Brooks in January, 1938, a member of the I. L. G. W. U.

Further answering said subparagraph (o), respondent states that Glynn Brooks was not an employe of respondent on July 5, 1935, or at any time since the enactment of the National Labor Relations Act and that respondent was not in January, 1938, or at any other time since the enactment of the National Labor Relations Act, under any obligation to recall or assign work to said Glynn Brooks.

[fol. 570] (p) Refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks and Mamie Tubbesing, members of the I. L. G. W. U., on or about July 23, 1935.

Further answering said subparagraph 11 (p), respondent states that neither of said Ellen Fry, Glynn Brooks, Mamie Tubbesing was an employe of respondent on July 5, 1935, or at any time since the enactment of the National Labor Relations Act and that respondent was not on July 23, 1935, or at any other time since the enactment of the National Labor Relations Act, under any obligation to recall or assign work to said Ellen Fry, Glynn Brooks, Mamie Tubbesing, or either of them.

(q) Instigating, causing, allowing and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike.

(r) Granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union making membership therein a condition of employment.

(s) Various other similar acts and conduct.

Respondent specifically denies paragraph (s) for the reason that under the rules of the Labor Board respondent will be in a position of having admitted allegations unless they are specifically denied. However, respondent asserts that the Labor Board has no jurisdiction to hear or determine any matters construed to be charged in paragraph (s) for the reason that the same are not specifically set forth and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

[fol: 571] Respondent denies by all or any of the acts set forth in Paragraph 11 it has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join and assist labor organizations and to bargain collectively through representatives of their own choosing and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act.

Respondent further states that during all of the times mentioned in Paragraph 11 the International Union, its officers, agents and members were engaged in the said unlawful conspiracy against respondent set forth in Section

B of this Answer, and the said matters set forth in said Section B of this Answer are by reference made a part specifically of respondent's Answer to Paragraph 11 as though set out in haec verbae.

Wherefore respondent prays that said Amended Complaint be dismissed and that respondent be exonerated of the charges therein contained.

DONNELLY GARMENT COMPANY

By R. J. Ingraham,  
Secretary.

REED & INGRAHAM,  
Attorneys for Respondent.

[fol. 572] State of Missouri,  
County of Jackson—ss.:

Robert J. Ingraham of lawful age, being first duly sworn, upon his oath states:

That he is Secretary of the Donnelly Garment Company, respondent herein, and he makes this affidavit for and on behalf of said respondent being legally authorized so to do.

Affiant further states that he has read the foregoing Answer, is familiar with the matters and facts therein stated, and that said allegations and facts are true to the best of his knowledge, information and belief.

ROBERT J. INGRAHAM.

Subscribed and sworn to before me this 13th day of July, 1939.

My commission expires July 14, 1941.

(Notarial Seal)

LAURA BAKER,  
Notary Public in and for  
Jackson County, Missouri.

[fol. 574] (Board's Exhibit No. 1-MMMM.)

Case No. XVII-C-371. — Date 7/15/39.

(Answer of Intervener, Donnelly Garment Workers' Union,  
to Amended Complaint.)

The United States of America

Before The National Labor Relations Board  
17th Region.

In The Matter Of

Donnelly Garment Company, and  
International Ladies Garment Workers' Union, and  
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Workers' Union, intervener in the above entitled matter, and for answer to the amended complaint filed by the Board herein on July 12, 1939, and marked "Board's Exhibit 1-KKKK" states:

(1) Intervener reiterates and adopts all allegations contained in its original answer herein and reasserts and reiterates them in this answer to the amended complaint.

(2) Denied that the employes of the Donnelly Garment Company were interfered with, restrained, coerced, intimidated or threatened by the employer, Donnelly Garment Company, or its officers or agents in connection with refraining from becoming members of the International Ladies' Garment Workers' Union, or informing, joining or becoming members of the Donnelly Garment Workers' Union.

(3) Specifically denies that Donnelly Garment Company or its officers or agents have interfered with, restrained, coerced, intimidated or threatened their employes or any of them in connection with refraining from becoming members of the International Ladies Garment Workers' Union, or informing or joining the Donnelly Garment Workers' Union in the manner set forth in, or by the acts set forth in, sub-paragraphs, a, b, c, d, e, f, g, (g1), i, [fol. 575] k, l, m, n, o, p, q and r of paragraph 11 of said amended complaint.



(4) Denies that the closed shop contract between intervenor and respondent is a result of or constitutes interference, restraint or coercion by respondent of intervenor.

(5) Denies that aforementioned closed shop contract was entered into at a time when intervenor was not the representative of respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, or at a time when intervenor was established, maintained or assisted by actions defined in the National Labor Relations Act as unfair labor practices and that respondent did interfere, restrain or coerce its employees by means of said closed shop contract.

(6) Specifically asserts and alleged that the Donnelly Garment Workers' Union is a valid labor organization, and at all times has been a valid labor organization as defined by the National Labor Relations Act, and is entitled to the protection of said Act, and asserts that its contracts with its employer are valid contracts, and as such entitled to the protection of this Board.

**GOSSETT, ELLIS, DIETRICH & TYLER.**

[fol. 576] (Board's Exhibit No. 1-TTTT.)

Case No. XVII-C-371. — Date 7/15/39.

(Motion of National Labor Relations Board to amend the Amended Complaint, and denial thereof.)

Comes now Daniel J. Leary, Attorney, Seventeenth Region, National Labor Relations Board, and moves to amend the amended complaint (Board's Exhibit 1-KKK) by inserting after paragraph 11, subsection (o) to be known as paragraph 11, subsection (p), the following, to-wit:

"(p) refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks, and Mamie Tubessing, all members of the L.L.G.W.U., on or about July 23, 1935."

**DANIEL J. LEARY,**  
Attorney 17th Region N.E.R.B.

See Rulings of Trial Examiner Board's Exhibit 1-SSSS.  
Motion denied.

**J. C. BATTEN,**  
Trial Examiner.

[fol. 577] (Motion of Respondent, Donnelly Garment Company, to clarify Rulings of Trial Examiner.)

United States of America

Before The National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International<sup>6</sup>Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

(Pencil signature J. C. B.)

Comes now the above named respondent Donnelly Garment Company and moves the Trial Examiner in the above entitled proceeding to clarify his rulings in said proceeding, hereinafter referred to, for the reason that such rulings are vague and indefinite and do not specify the portions of the evidence or of the offers of proof which are excluded or refused by the ruling and because the rulings in such form do not apprise the respondent of what evidence is received and what evidence or offers of proof are rejected. Said rulings in such form are unfair and prejudicial to respondent and deny respondent due process of law. The rulings referred to are the following:

Rulings in Board's Exhibit 1-SSSS.

1. In subparagraph (g) of Exhibit 1-SSSS, the Examiner's ruling refuses respondent's offer of proof (Exhibit 1-JJJJ) "insofar as the offer contemplates matters barred by the ruling" of the Examiner.

Respondent asks that this ruling be clarified so as to [fol. 578] show what parts of the offer of proof are refused and what parts are accepted.

2. Respondent makes the same motion and request as to the ruling contained in subparagraph (h) of Exhibit 1-SSSS.

3. Respondent makes the same motion and request as to the ruling contained in subparagraph (i) of Exhibit 1-SSSS.

4. In subparagraph (j) the Examiner's ruling overrules the objections of the Board to NRA-JMC Exhibit 3, but the ruling further specifies: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects."

Respondent asks that this ruling be clarified so as to show what parts of the evidence contained in NRA-JMC Exhibit 3 are rejected and also so as to show upon what subjects any of said testimony is rejected.

5. Respondent makes the same motion and request as to the ruling contained in subparagraph (k) of Exhibit 1-SSSS.

6. Respondent makes the same motion and request as to the rulings contained in subparagraph (l) of Exhibit 1-SSSS.

7. Respondent makes the same motion and request as to the ruling contained in subparagraph (m) of Exhibit 1-SSSS.

#### Other Similar Rulings.

8. On pages 1861-62 of the transcript, the Examiner overruled the objections of respondent to NRA-JMC Exhibits 1-A to 1-BBBB but stated that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore [fol. 579] made with reference to the introduction of evidence upon certain objections (subjects)".

Respondent makes the same motion and request as to this ruling of the Trial Examiner.

9. Respondent makes the same motion and request as to the similar ruling made by the Examiner at page 1864 of the transcript with reference to NRA-JMC Exhibits 5-A to 5-GG.

10. Respondent makes the same motion and request as to the similar ruling made by the Trial Examiner on page

1865 of the transcript as to NRA-JMC Exhibits 9-A to 9-CC.

11. Respondent makes the same motion and request as to the similar ruling of the Trial Examiner on page 1866 of the transcript as to NRA-JMC Exhibits 13-A to 13-R.

12. Respondent makes the same motion and request as to all other similar rulings of the Trial Examiner contained in the record.

REED & INGRAHAM,  
Attorneys for Respondent.

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[fol. 580] (Motion of Intervener, Donnelly Garment Workers' Union, to Clarify Rulings of Trial Examiner.)

Case No. XVII-C-371.

Comes now the Intervener, Donnelly Garment Workers' Union, and joins in the motion of Respondent to clarify rulings of the trial examiner. Intervener moves the trial examiner to clarify rulings hereinafter referred to for the reason that such rulings are vague and indefinite and do not specify the portions of the evidence or of the offers of proof which are excluded or refused by the ruling, and because the rulings in such form do not apprise the intervener what evidence is received and what evidence or offers of proof are rejected. Said rulings in such form make it uncertain and impossible to determine the subjects and the evidence considered by the trial examiner in reaching his decision, and are unfair and prejudicial to intervener, and deny intervener due process of law. The rulings referred to are the following:

Rulings in Board's Exhibit 1-SSSS.

1. In Subparagraph (g) of Exhibit 1-SSSS, the Examiner's ruling refuses respondent's offer of proof (Exhibit 1-JJJJ) "insofar as the offer contemplates matters barred [fol. 581] by the ruling" of the Examiner.

Intervener asks that this ruling be clarified so as to show what parts of the offer of proof are refused and what parts are accepted.

2. Intervener makes the same motion and request as to the ruling contained in subparagraph (h) of Exhibit 1-SSSS.

3. Intervener makes the same motion and request as to the ruling contained in subparagraph (i) of Exhibit 1-SSSS.

4. In subparagraph (j) the Examiner's ruling overrules the objections of the Board to NRA-JMC Exhibit 3, but the ruling further specifies: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

Intervener asks that this ruling be clarified so as to show what parts of the evidence contained in NRA-JMC Exhibit 3 are rejected and also so as to show upon what subjects any of said testimony is rejected.

5. Intervener makes the same motion and request as to the ruling contained in subparagraph (k) of Exhibit 1-SSSS.

6. Intervener makes the same motion and request as to the rulings contained in subparagraph (l) of Exhibit 1-SSSS.

7. Intervener makes the same motion and request as to the ruling contained in subparagraph (m) of Exhibit 1-SSSS.

#### Other Similar Rulings.

8. On page 1861-62 of the transcript, the Examiner overruled the objections of intervener to NRA-JMC Exhibits 1-A to 1-BBBB but stated that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)".

[fol. 582] Intervener makes the same motion and request as to this ruling of the Trial Examiner.



9. Intervener makes the same motion and request as to the similar ruling made by the Examiner at page 1864 of the transcript with reference to NRA-JMC Exhibits 5-A to 5-GG.

10. Intervener makes the same motion and request as to the similar ruling made by the Trial Examiner on page 1865 of the transcript, as to NRA-JMC Exhibits 9-A to 9-CC.

11. Intervener makes the same motion and request as to the similar ruling of the Trial Examiner on page 1866 of the transcript as to NRA-JMC Exhibits 13-A to 13-R.

12. Intervener makes the same motion and request as to all other similar rulings of the Trial Examiner contained in the record.

FRANK E. TYLER, LUCIAN LANE,  
THOMAS J. PATTEN,

Attorneys for Intervener.

[fol. 583] (Rulings of Trial Examiner Denying Motion of Respondent, Donnelly Garment Company, to Clarify his Rulings.)

United States of America

Before the National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

The respondent having moved to clarify certain rulings of the Trial Examiner (see Board Exhibit 1-ssss), and the undersigned having duly considered the same,

The motion to clarify is hereby denied.

Dated: October 2, 1939.

(Seal)

JAMES C. BATTEN,  
Trial Examiner.

[fol. 584] (Motion of Respondent, Donnelly Garment Company, for Leave to File Certain Documents, etc.)

United States of America

Before the National Labor Relations Board  
Seventeenth Region.

In the Matter of

Donnelly Garment Company, Donnelly Garment Sales  
Company

and

International Ladies Garment Workers' Union.

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes respondent Donnelly Garment Company and states:

That part C of its Answer filed in the above matter contained a petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. That the Examiner, on or about June 8, 1939, ruled that said petition be not received or considered in the instant proceedings, and stated that the same should be made direct to the National Labor Relations Board.

Thereafter, on or about September 6, 1939, respondent filed with the National Labor Relations Board a petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. That on or about September 11, 1939, said petition and copies thereof was returned to respondent with a letter dated September 8, 1939, signed by Hugh E. Sperry, Acting Regional Director for the 17th Region of the National Labor Relations Board, advising that the said petition did not meet the requirements of the Board and the same was not docketed. A Copy of said letter and said petition so filed with the said Acting Regional Director of the 17th [fol. 585] Region of the National Labor Relations Board are as follows, to-wit:

"NLRB No. 89a

United States of America  
Before the National Labor Relations Board  
17 Region.

"In the matter of

Donnelly Garment Company,  
Donnelly Garment Sales Company, Petitioners  
and  
Donnelly Garment Workers' Union,  
International Ladies' Garment Workers' Union.

Case No. .... Re .....

Petition by Employer for Investigation and Certification  
of Representatives Pursuant to Section 9 (c) of the  
National Labor Relations Act.

Name of employers Donnelly Garment Company, Donnelly  
Garment Sales Company.

Address 1828 Walnut Street, Kansas City, Missouri.

General nature of business-manufacture and sales of ladies'  
house dresses and wash frocks.

Approximate total number of employees twelve hundred.  
Description of the bargaining unit or units which the  
competing labor organizations described below claim  
appropriate.

All employees of said Companies with the exception of  
officers, executives, supervisory employees and em-  
ployees with authority to hire, discipline or discharge.

Approximate number of employees in such unit or units  
Twelve hundred.

Name or names and addresses of all known individuals or  
labor organizations which are disputing concerning  
the true representatives of petitioners' employees for  
the purpose of collective bargaining:

Donnelly Garment Workers' Union, K. C., Mo.; Inter-  
national Ladies' Garment Workers' Union, N. Y. C.

The undersigned hereby alleges that a question or con-  
troversy has arisen concerning the representation of

employees in that two or more of the labor organizations named above have presented to the undersigned employer conflicting claims concerning the true representatives of the majority of petitioners' employees for the purpose of collective bargaining.

Any other relevant facts.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said Act.

[fol. 586] "The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

"Subscribed and sworn to before me this 6th day of September, 1939, at Kansas City, Missouri.

(Signed) ANNABEL SHADDINGER,  
Notary Public in and for Jackson  
County, Mo.

My commission expires Dec. 1, 1940.

Signature of employer filing the petition. (If filed by a corporation, give the name and official position of the person acting for the corporation.)

DONNELLY GARMENT COMPANY,  
By R. J. Ingraham, Secretary.

DONNELLY GARMENT SALES  
COMPANY,  
By R. J. Ingraham, Secretary"

"National Labor Relations Board  
Seventeenth Region  
Scarritt Building  
Kansas City, Missouri  
September 8, 1939

"Donnelly Garment Company and  
Donnelly Garment Sales Company  
1828 Walnut Street  
Kansas City, Missouri

Attention: R. J. Ingraham, Secretary.

Dear Sir:

"We are returning herewith the original and three copies of a petition which you forwarded to this office under date of September 6, 1939, for the reason that this petition is deficient in form and does not meet the requirements of the Rules and Regulations of the Board. This petition has, accordingly, not been docketed.

"You will note that in Article III, Section 2 (b), Paragraph (5) of the Board's regulations it is required that a petition, when filed by an employer, shall contain a brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more such labor organizations have presented to the employer conflicting claims, that each represents a majority of the employees in the unit or units set forth in Paragraph (3) of Article III, Section 2(b). I wish also to direct your attention to the following language of Article III, Section 3, in which it is stated, ' . . . Provided that the Board shall not direct an [ D. 587 ] investigation on a petition filed by an employer unless it appears to the Board that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the bargaining unit or units claimed to be appropriate . . . '

★ "If you should wish to secure a copy of the Rules and Regulations of the Board, Series 2, you may do so by writing to the Superintendent of Documents, Washington, D. C.

"If the petition can be sworn to in accordance with the requirements of Article III of said Rules and Regulations and is again submitted to us, we shall be pleased to docket it and to make such investigation and take such action as appears appropriate.



"We enclose herewith an original and five copies of the employer petition form.

Very truly yours,

Encls.

HUGH E. SPERRY,  
Acting Regional Director."

Wherefore, respondent moves the Examiner for leave to file herein and make a part of the record of this case said original petition so filed with the National Labor Relations Board on September 6, 1939, and a photostatic copy of said letter addressed to the Donnelly Garment Company and Donnelly Garment Sales Company, dated September 8, 1939, and signed by Hugh E. Sperry, Acting Regional Director for the Seventeenth Region of the National Labor Relations Board.

Dated this 11th day of September, 1939.

REED and INGRAHAM,  
Attorneys for Respondent.

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[fol. 588] (Order denying Motion of Respondent, Donnelly Garment Company, for leave to file certain Documents, etc.)

United States Of America,

Before The National Labor Relations Board  
Seventeenth Region

Case No. XVII-C-371

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers Union, Party to the Contract

The respondent having on or about September 6, 1939, filed with the National Labor Relations Board (Regional Office, Kansas City, Missouri) a petition for investigation and certification of representatives pursuant to Section 9 (c) of the Act, and the petition having been by letter dated September 11, 1939 returned to respondent by the

Regional Director, the respondent then by written motion moved the undersigned for leave to file and make a part of the record in the above-entitled case the original petition and the photostat copy of the letter of September 11, 1939.

The motion for leave to file and make certain documents a part of the record is hereby denied.

Dated: October 2, 1939.

JAMES C. BATTEN,  
Trial Examiner.

(Seal)

[fol. 589] (Board's Exhibit No. 1-BBBBBB.)

Dated July 6, 1942.

(Order designating James C. Batten as Trial Examiner in further hearing of case, etc.)

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner in the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, Party to the Contract. Case No. C-1382.

Seal  
National Labor  
Relations Board

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 3rd day of July, A. D. 1942, at Washington, D. C.

BEATRICE M. STERN,  
Executive Secretary.

[fol. 590]      Order Designating Trial Examiner  
                     United States Of America  
                     Before The National Labor Relations Board  
                     Case No. C-1382  
 In the Matter of

                    Donnelly Garment Company  
    and  
                     International Ladies' Garment Workers' Union  
    and  
 Donnelly Garment Workers Union, Party to the Contract

It Is Herèby Ordered that James C. Batten act as Trial Examiner in the further hearing in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 2, as amended, of the National Labor Relations Board.

Dated, Washington, D. C. July 3, 1942.

Seal  
 National Labor  
 Relations Board

GEO. O. PRATT,  
 Chief Trial Examiner.

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[fol. 591]      (Board's Exhibit No. 1-CCGGC.)

Case No. C-1382 (XVII-C-371).—Date 7/8/42.

(Application of Respondent, Donnelly Garment Company,  
 for Designation of another Trial Examiner in the  
 place and stead of James C. Batten)

Comes now the above named respondent, Donnelly Garment Company, and respectfully requests the National Labor Relations Board to designate another Trial Examiner to hold the hearing in the above entitled case in the place and stead of James C. Batten, for the reasons, among others, that said James C. Batten is biased and prejudiced against respondent and has prejudged the issues in this case and the evidence to be adduced at the pending hear-

ing, and respondent cannot have a fair trial before him as Trial Examiner. An affidavit in support of this Application is attached hereto, made a part hereof, and filed herewith.

**DONNELLY GARMENT COMPANY,**  
By Reed & Ingraham,  
Its Attorneys.

Receipt of original and three copies of the foregoing Application and Affidavit is hereby acknowledged this 8th day of July, 1942.

Regional Director, National Labor Relations Board  
Region.

[fol. 592] Affidavit Of Prejudice.

State of Missouri,  
County of Jackson—ss.:

Now comes R. J. Ingraham and being duly sworn on his oath, states that he is secretary of the Donnelly Garment Company, respondent herein, and makes this affidavit upon its behalf.

¶ Affiant further states that he verily believes that James C. Batten, Trial Examiner in this case, is biased and prejudiced against this respondent so that respondent cannot have a fair trial or a fair hearing of the evidence which the Circuit Court of Appeals has ordered to be taken for the following reasons:

1. Said Trial Examiner has prejudged the evidence which the Circuit Court of Appeals has ordered to be taken and cannot give respondent a fair and impartial trial.

2. Said trial examiner has repeatedly declared that the evidence which he is directed to weigh in this hearing is worthless and not worthy of consideration as shown by the following excerpts from the record in the case:

[fol. 593] (Respondent's Exception No. 207, pp. 131, 132, Rec. pp. 557, 558, 559. Witness Rose Todd).

(On examination by Mr. Stottle re provisions of DGWU contract with respondent.)

"Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness, hasn't said she knows nothing about this meeting. She said they discussed every single point.

.....

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

.....

"Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as



the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervener excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham."

[fol. 594] (Respondent's Exception No. 220, pp. 144, 145, 146, Rec. pp. 857, 858, 864, 865, 866.)

"Q. (By Mr. Stottle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts\*\*\*\* in this city with the International Ladies' Garment Workers' Union?

.....

(Objections by Board and I. L. G. W. U.)

"Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the country. It is competent for that purpose.

.....

"The point has been raised that Miss Todd and other members of the Committee didn't really negotiate.

.....

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees

have better wages than are contained in any of these other contracts, I think that is very conclusive evidence that this union is properly representing the employees.

....

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fidehess of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do, not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case."

[fol. 595] (Respondent's Exception No. 223, p. 148, Rec. pp. 886, 887, 888.)

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?

"A. Yes, we felt like that is a good contract. We have certain things that we had to give—

"Mr. Langsdale (interrupting): I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection."

[fol. 596] (Respondent's Exception No. 224, pp. 148, 149, Rec. pp. 908, 909.).

(Witness Rose Todd.)

"Q. (By Mr. Tyler): Had you or had you not seen notices in the papers of physical violence at the Gernes plant?

"Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason — whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testimony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

[fol. 597] (Respondent's Exception No. 225, pp. 149, 150, Rec. pp. 910, 911, 913.)

• (On cross examination of witness Rose Todd by Mr. Tyler.)

"Q. Did you see any of the banners or signs the pickets carried?

"A. Yes, sir.

"Q. Do you remember what they said on them?

"Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

"Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

• • • •

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union.

"Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof."

[fol. 598] (Respondent's Exception No. 226, p. 151, Rec. pp. 913, 914, 916.)

(On cross examination of witness Rose Todd by Mr. Tyler.)

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

[fol. 599] (Respondent's Exception No. 254, pp. 172, 173, Rec. pp. 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425).

(On cross examination of witness May Fike by Mr. Lane.)

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to, that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

"Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham



union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

.....

"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

"Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of

the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it."

[fol. 600] (Respondent's Exception No. 270, pp. 194, 195, Rec. pp. 1651, 1652, 1653, 1654, 1655, 1656.)

(On Examination of witness Elsie Graham Greenhaw by Mr. Langsdale)

"Q. (By Mr. Langsdale): Mrs. Greenhaw, I show you a document which has been marked I.L.G.W.U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.

I call your attention to that page of the document which has been marked I.L.G.W.U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do.

.....

"Q. This document reads —

"Trial Examiner Batten (Interrupting): Now, are you going to offer it?"

"Mr. Langsdale: Yes, I am. Is there any objection?

Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

"Mr. Langsdale: You can read it better than I can tell you. (Handing I.L.G.W.U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

"Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten: I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

.....

"Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

.....

[fol. 601] "Trial Examiner Batten (Interrupting): Well, Mr. Langsdale, my position on this situation is just this — and I have had it come up in about six cases where I have been presented either with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

.....

"Now, I am making that as a very definite statement now, so that all of you, if you have an offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

"Trial Examiner Batten: That is exactly what I mean.  
[fol. 602] (Respondent's Exception No. 273, p. 199, Rec. pp. 1673, 1674.)

(On cross examination of Elsie Graham Greenhaw by Mr. Ingraham.)

"Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is what did Mrs. Reed say at this meeting.

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech."

[fol. 603] (Respondent's Exception No. 327, pp. 251, 252, Rec. pp. 2610, 2611, 2612. Witness Nellie Stites.)

(On examination by Mr. Stottle.)

"Q. Does that union, the Donnelly Garment Workers' Union, and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

...

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the complaint, and we submit that one of the best ways of finding out whether a person did anything of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

...

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

[fol. 604] (Respondent's Exception No. 328, p. 253, Rec. pp. 2612, 2613.)

"Q. (By Mr. Stottle) Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

"Mr. Leary: I object to that for the reason that it is immaterial.

"Trial Examiner Batten: Sustained.



"Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed this union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

"Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter. You may make such offer as in your opinion is necessary to protect the interests of your client."

[fol. 605] (Respondent's Exception No. 330, p. 235, Rec. p. 2617.)

"Q. (By Mr. Stottle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union; on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?

"A. None.

"Trial Examiner Batten: Well, now just a moment. The answer may be stricken."

[fol. 606] (Respondent's Exception No. 338, p. 261, Rec. p. 2712.)

(On cross examination of witness Clarice Martin by Mr. Patten)

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't think

it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness".

[fol. 607] (Respondent's Exception No. 345, p. 267, Rec. p. 2838. Witness Jack McConaughy.)

(On examination by Mr. Tyler)

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?

"A. Yes, sir.

"Q. What were the principal subjects of discussion?

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

[fol. 608] (Respondent's Exception No. 346, pp. 267, 268, 269, Rec. pp. 2838, 2839, 2840, 2841, 2843. Witness Jack McConaughy.)

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

"A. Everyone felt that—I talked to numbers of them on my job in the service-department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking

place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof."

"And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material."

...

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question."

...

"Mr. Langsdale: I move to strike the answer of the witness to the last question."

"Trial Examiner Batten: It may be stricken."

...

"Mr. Stottle: Respondent does except to the striking of this answer."

[fol. 609] (Respondent's Exception No. 350, pp. 273, 274, Rec. pp. 2939, 2940, 2941, 2942, 2943. Witness Mrs. Weigand.)

(On examination by Mr. Tyler.)

"Q. Did you ever hear Velma Dowdy testify in that case?"

"A. Yes, I did."

"Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

...

(Objection by I. L. G. W. U.)

"Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

...

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice ...

...

"Trial Examiner Batten: We are not interested in the reason for joining."

[fol. 610] (Respondent's Exception No. 351, pp. 275, 276, 277; Rec. pp. 2993, 2994, 2995, 2996, 2997. Witness Lyle Jeter.)

(On examination by Mr. Patten).

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up--

"Trial Examiner Batten (Interrupting): Tell me how you were threatened.

"Mr. Langsdale: I move that that part, the last part of his answer be stricken.

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened.

"A. I have to tell you a little bit about this first part, if I may.

"Q. (By Trial Examiner Batten) Did somebody threaten you personally?

"A. Threatened the Donnelly Garment Company.

"Q. Tell me what they said, and who it was.

"A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'

"Q. (By Mr. Patten) Did you report that at the plant?

"A. I talked it over with the employees.

.....

"Trial Examiner Batten: The point you have finished covering. I don't think that is material to this case.

"Mr. Patten: I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

"Trial Examiner Batten: Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I don't think this sort of testimony has anything to do with it.

.....

"Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In so far as we show these circumstances which motivated them we negative the contention of the Board and the International.

"Trial Examiner Batten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question."

[fol. 611] (Record pp. 2922, 2923, 2924, 2925. Examination of witness Marjorie Green by Mr. Tyler).



"Q. Do you personally prefer the Donnelly Garment Workers' Union as your bargaining representative to any other union you know about?

"A. Yes, sir, I certainly do.

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

"A. Well, in the first place—

"Trial Examiner Batten (Interrupting). Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

"Mr. Tyler. I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

"Trial Examiner Batten. You mean by that, you contemplate calling all of the employees to testify to this question?

"Mr. Tyler. I contemplate calling a large number.

"Trial Examiner Batten. I can tell you now, I do not intend to listen to them.

.....

"Mr. Tyler. Are we not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

"Trial Examiner Batten. Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election, where they can vote and no one knows how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

.....

"Mr. Shepard. I would like to have the record show, in view of your remarks with regard to a representative of the management being present, when this witness gave her

answer in response to Mr. Tyler's question in regard to domination no member or representative of the company was present.

"Trial Examiner Batten. I agree with you. Mr. Baty is not in the room, but I see him but in the hall. And of course the company's attorneys are here.

"Mr. Shepard. We are here of necessity, of course.

"Trial Examiner Batten. Yes, I assume you have to be here."

[fol. 612] 3. Said trial examiner by repeated adverse comments and criticisms openly made during the trial against respondents' and interveners' witnesses demonstrated his prejudice and bias against respondent.

4. Said trial examiner, by adverse rulings made during the trial against respondent, and in the Intermediate Report of the Trial Examiner, demonstrated his prejudice and bias against respondent.

5. Said trial examiner conferred with a person or persons who were not present at the hearing heretofore held, and as a result of suggestions made to him prepared his Intermediate Report and by said acts demonstrates his disqualification to act as Trial Examiner.

Further affiant sayeth naught.

R. J. INGRAHAM.

Subscribed and sworn to before me by R. J. Ingraham this 6th day of July, 1942.

My commission expires July 14, 1945.

Notarial  
Seal

LAURA BAKER,  
Notary Public in and for  
Jackson County, Missouri.

[fol. 614] (Board's Exhibit No. 1-EEEEEE.)

Case No. C-1382.—Date 8/3/42.

(Application of Respondent, Donnelly Garment Company,  
for Continuance of Hearing.)

Comes now the respondent Donnelly Garment Company and respectfully moves the National Labor Relations Board to grant a continuance of the further trial of this proceeding until a date not earlier than December 23, 1942, for the following reasons, to-wit:

On the 23d day of April, 1942, at the special instance and request of the War Department, respondent entered into a written contract with the Quartermaster Corps of the War Department of the United States, wherein respondent agreed to manufacture and deliver to the War Department, on or before December 23, 1942, 1,000,000 pairs of cotton shorts (drawers) to be used for equipment of the armed forces of the United States now stationed in Africa, Australia and at other war fronts. Respondent since the date of said contract has purchased large amounts [fol. 615] of material (having procured priority rating for the same) for the performance of said contract; and has been, and is now, actively and intensively engaged in the performance of said contract. Respondent has manufactured and delivered approximately 121,690 pairs of the 1,000,000 pairs of shorts contracted for, leaving a balance of approximately 878,310 pairs to be manufactured and delivered on or before December 23, 1942. This will require a production of an average of approximately 38,187 pairs per week during the remainder of the contract period.

In addition to the aforesaid contract with the War Department, respondent has accepted numerous orders from numerous defense plants for the manufacture of women's work garments of a particular type, especially designed for women engaged in hazardous work in the handling of powder and high explosives. These garments, at the request of representatives of the War Production Board, have been specially designed by respondent in cooperation

with safety engineers of said defense plants. Respondent is now actively and intensively engaged in filling these war orders, and will be so engaged for the next ninety days.

Previous to the present war respondent was engaged exclusively in the manufacture of ladies' garments. In order to enable respondent to perform its aforesaid contract with the War Department and to fill the aforesaid orders from defense plants, respondent has been and is now actively and intensively engaged in a conversion of its plant facilities and methods of operation in order efficiently and expeditiously to manufacture the products called for in said war contract and orders. The change-over of its said plant facilities and methods of work is a highly technical matter requiring the combined skill, knowledge and experience of all of its management and its [fol. 616] mechanical and technical staff, as well as the full cooperation of all of its employees. The aforesaid conversion of its plant facilities and methods of work is still in progress and will necessarily continue for at least the next ninety days.

In the existing circumstances the fulfillment of said contract with the War Department and the filling of said orders from defense plants will require respondent to operate its plant at full capacity. Any interference with plant operations through absence of many employees from their work would seriously affect and impair the ability of respondent to comply with its obligations under said contract with the War Department and said accepted orders from defense plants.

The Circuit Court of Appeals in this proceeding (123 F.2d 215, 221-225) has held that respondent is entitled to call as witnesses at the further trial of this proceeding many hundreds of its present employees, who were in its employ in the spring of 1937, to show by said witnesses how and why the employees formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the respondent either in the formation or administration of the union, to show what the president of the respondent company had said to the employees at the mass meeting in the spring of 1937, to show that the employees' freedom to organize and to choose their own

representatives for the purposes of collective bargaining had not been interfered with by respondent, and to show that the employees' union, both in its formation and administration, was exclusively controlled and supported by the employees. Necessarily the introduction of this proof would require several weeks' time, and would require the attendance before the Trial Examiner of a great many of respondent's said employees each day during said trial. Necessarily respondent's attorneys would require the assistance at the trial of certain of respondent's executives and others having to do with the management of its plant operations. If respondent should offer said witnesses to make said proof, the necessary result would be seriously to interfere with and impede respondent's plant operation and its prompt performance of the aforesaid contract with the War Department and the prompt filling of said orders from defense plants.

Preparation by this nation for war, including equipment by the War Department of this nation's armed forces, is of supreme national importance; and time is of the essence. Prompt performance of contracts (such as respondent's aforesaid contract with the War Department) and prompt filling of orders from defense plants, for the supply of clothing and other equipment to the armed forces and to those engaged in war work, is an essential part of this nation's preparation for war; and it is in the national interest that nothing shall be permitted to interfere with prompt performance of such contracts.

Postponement of the further trial of this proceeding until after respondent has completed performance of said contracts and the filling of said orders will enable respondent to perform said contract and fill said orders on time. Such postponement will cause no injury to the rights of any party. In this connection respondent respectfully calls attention of the Board to the fact that the alleged facts set up in the complaint herein are alleged to have occurred in the spring of 1937; yet the International Ladies' Garment Workers' Union, though having immediate knowledge of said alleged facts, filed no charges against respondent with the Board until August 9, 1938; that the Board, though immediately possessed of full knowledge of said



alleged facts, filed no complaint against respondent until April 6, 1939; that although the Circuit Court of Appeals' decision herein became final on January 6, 1942, the Board [fol. 618] delayed compliance with the decision until April 21, 1942. These aforesaid delays by the International Ladies' Garment Workers' Union and by the Board tend strongly to show that neither has heretofore considered that there was any great need for haste in the disposition of this proceeding. Nothing has since occurred to create any need for haste in the disposition of this proceeding.

The trial of this proceeding should be continued as herein prayed for the further reason that if a continuance is denied and the trial proceeds, respondent will be denied the opportunity of a fair and adequate trial for the reason that in its desire and determination to serve the nation in the present emergency, by promptly supplying said goods for the armed forces and defense workers in accordance with its aforesaid contract and orders, respondent will be unable properly and fully to present the evidence which it is entitled to present herein, because of its inability to spare employees from their work to testify as witnesses herein.

For these reasons respondent respectfully appeals to this Honorable Board, in the exercise of its discretion, to order the further trial of this proceeding postponed until a date not earlier than December 23, 1942.

JAMES A. REED,  
ROBT. J. INGRAHAM,  
WM. S. HOGSETT,  
Attorneys for Respondent  
Donnelly Garment Company.

State of Missouri,  
County of Jackson.—ss.

Alex C. Green, of lawful age, being first duly sworn upon his oath states that he is Vice President of the respondent Donnelly Garment Company, and that he is authorized to [fol. 619] and does make this affidavit in behalf of said

respondent; that affiant has personal knowledge of the facts stated in the above and foregoing application, and that the facts stated therein are true.

ALEX C. GREEN.

Subscribed and sworn to before me this 16th day of July, 1942.

ELSA LEAR,

Notary Public Within and For  
Jackson County, Missouri.

(Seal)

My commission expires October 6, 1942.

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[fol. 620] (Board's Exhibit No. 1-GGGGG,)

Case No. C-1382. — Date 8/3/42.

(Order denying Applications of Respondent, Donnelly Garment Company, for Designation of another Trial Examiner and for a Continuance.)

United States of America

Before The National Labor Relations Board

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers Union, Party to the Contract.

Case No. C-1382.

On November 6, 1941, the Circuit Court of Appeals for the Eighth Circuit remanded the instant case to the National Labor Relations Board, herein called the Board, for further proceedings. <sup>1</sup> On April 20, 1942, the Board issued its Order Vacating Decision and Order, Reopening Record, Referring Proceeding to the Regional Director,

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<sup>1</sup>Donnelly Garment Company vs. National Labor Relations Board, 123 F. (2d) 215 (C.C.A. 8).

and Directing Further Hearing. Thereafter, on June 6, 1942, the Board by the Regional Director for the Seventeenth Region (Kansas City, Missouri), caused notices of further hearing to be served upon Donnelly Garment Company, herein called the respondent, International Ladies' Garment Workers' Union, herein called I.L.G.W.U., and Donnelly Garment Workers Union, herein called D.G.W.U.

The further hearing commenced on July 6, 1942, before James C. Batten, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel.

No testimony was taken in the reopened hearing. On July 8, 1942, the respondent filed with the Trial Examiner its Affidavit of Prejudice, for the purpose of obtaining the designation of another Trial Examiner. The D.G.W.U. concurred in the application. The Trial Examiner referred the matter to the Board.

On July 17, 1942, the respondent filed with the Board an application for continuance of the further hearing. On July 21, 1942, a hearing for the purpose of oral argument on the affidavit of prejudice and the application for continuance was held before the Board in Washington, D. C. Counsel for the respondent, for the I.L.G.W.U., and for the D.G.W.U. participated in the argument. Prior to the argument counsel for the Board submitted a letter in opposition to the respondent's affidavit of prejudice. At the argument counsel for the I.L.G.W.U. filed an answer to the respondent's application for continuance. After the argument counsel for the respondent and counsel for the D.G.W.U. submitted letters in support of the application for continuance. The Board has carefully considered, in the light of the oral argument and of the related documents filed, [fol. 621] the afore-mentioned application for designation of another Trial Examiner and motion for continuance, and has concluded that both requests should be denied.

The respondent's affidavit of prejudice alleges that Trial Examiner Batten, who presided at the original hearing in this matter, is prejudiced against the respondent so that it cannot have a fair hearing on the evidence which the

Circuit Court of Appeals found had been erroneously excluded by him.<sup>2</sup> It advances the following reasons for this contention:

1. The Trial Examiner has prejudged the evidence ordered to be taken.

2. The Trial Examiner has repeatedly declared that the evidence which he is directed to weigh in this proceeding is worthless and not worthy of consideration.

3. The Trial Examiner, by repeated adverse comments and criticisms openly made during the trial against respondent's and intervenor's witnesses, demonstrated his prejudice and bias against respondent.

4. The Trial Examiner, by adverse rulings made during the trial and in his Intermediate Report, demonstrated his bias and prejudice against respondent.

5. The Trial Examiner "conferred with a person or persons who were not present at the hearing heretofore held, and as a result of suggestions made to him prepared his Intermediate Report and by said acts demonstrates his disqualification to act as Trial Examiner."

The specific items of proof advanced by the respondent in its affidavit consist of excerpts from the record of the prior hearing. All these excerpts, with the exception of two in which Trial Examiner Batten commented on the character of a witness' testimony, described instances in which Trial Examiner Batten, for the most part upon repeated offers by the respondent and the D.G.W.U., excluded evidence which the Circuit Court of Appeals later held these parties should have been allowed to introduce. It may be noted that similar evidence offered by the I.L.G.W.U. had likewise been excluded by the Trial Examiner. Each of the particulars relied on in the affidavit of prejudice was brought by the respondent to the attention of the Circuit Court of Appeals. The Court decided that the Trial Examiner and the Board had been free of

<sup>2</sup>The evidence in question was principally that of employees of the Donnelly Company concerning the reasons why and the circumstances under which they became and remained members of the D.G.W.U. *Donnelly Garment Company vs. National Labor Relations Board*, 123 F.(2d) 215 (C.C.A. 8).

any bias or prejudice.<sup>3</sup> Having carefully examined the matters now adduced by the respondent, we can see no reason for disagreeing with the finding of the Circuit Court of Appeals or for doubting that the evidence ordered by that Court to be admitted will be fairly and judiciously received and considered. Indeed, to disqualify the Trial Examiner for his previous error would be equivalent to barring a trial judge who had been overruled on a question of evidence by an appellate court, from presiding over the further hearing; such is not the customary practice.<sup>4</sup>

We have considered all the reasons advanced by the respondent in its affidavit and we find no merit in them.

[fol. 622] The respondent's application for continuance asserts that the hearing should be postponed to a date not earlier than December 23, 1942, for the reason that it is engaged in war production and that the employees it expects to call will not be available as witnesses without serious interference with such production. Experience amply supports the Congressional policy embodied in the Act that the effective safeguarding of full freedom of organization by employees constitutes a fundamental basis of industrial peace.<sup>5a</sup> The need for the application of the principles of the Act to industry is even greater in time of war than in peacetime, while the abandonment or postponement of the Act's guarantees might well create the tensions that have in the past led to industrial discontent, disturbance, and unrest, with consequent impairment of efficiency and production.

Furthermore, it has been the Board's fixed policy to conduct hearings at such times and in such manner as to effect a minimum of interference with war production. We believe that the Trial Examiner is in the best position to make provision regarding the availability of particular witnesses and we hereby instruct him that, in so doing, he give every consideration to the desirability of causing as little hindrance as possible to the respondent's production.

<sup>3</sup>Donnelly Garment Company vs. National Labor Relations Board, 123 F.(2d) 215 (C.C.A. 8).

<sup>4</sup>Berger vs. United States, 255 U.S. 22, 31; Minnesota & Ontario Paper Co. vs. Molyneux, 70 F.(2d) 545, 547 (C.C.A. 8).

<sup>5a</sup>National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 33.



It Is Hereby Ordered that the Affidavit of Prejudice be, and the same hereby is, dismissed, and that the Application for Continuance be, and the same hereby is, denied.

Signed at Washington, D. C., this 28 day of July, 1942.

Harry A. Millis,  
Chairman.

Wm. M. Leiserson,  
Member.

NATIONAL LABOR RELATIONS BOARD.

[fol. 623] (Board's Exhibit No. 1-XXXXX.)

Case No. C-1382.

Exceptions of Respondent Donnelly Garment Company to the Denial of Its Application for the Designation of Another Trial Examiner and to the Denial of Its Application For a Continuance.

I.

Comes now the above named respondent, Donnelly Garment Company and excepts to the order (Board's Exhibit 1- ), rulings and action of the National Labor Relations Board on July 28, 1942 (and of the Trial Examiner in pursuance of said order) denying Respondent's application for the designation of another Trial Examiner herein, for each and all of the following reasons, to wit:

1. Because said order, rulings and action are erroneous under the law and the facts.

2. Because said order, rulings and action deprive and will deprive Respondent of a fair trial herein, for all the reasons set forth in Respondent's application for the designation of another Trial Examiner and in the Affidavit of Prejudice attached thereto and made a part thereof.

[fol. 624] 3. Because the Trial Examiner acts in a judicial or quasi-judicial capacity and it appears from said Application and Affidavit and from the record herein that the Trial Examiner, James C. Batten, has formed and expressed a fixed and unqualified opinion that the kind of testimony which the Court has held should be received in this further

hearing, is worthless and of no probative value upon the issues involved in this proceeding, and because thereof said James C. Batten is unable to fairly weigh or appraise the evidence to be adduced in this hearing or to make an intermediate report or recommendations to the Board fairly and judicially weighing and appraising said evidence or fairly and judicially applying said evidence to the issues involved herein, and Respondent will be deprived of the fair, unbiased, judicial report and recommendation of the Trial Examiner contemplated by the provisions of the National Labor Relations Act; that as a consequence thereof Respondent by said order, rulings and action of the Board and the Trial Examiner, is and will be deprived of a fair trial and hearing herein and of its liberty and property without due process of law, in contravention of the Fifth Amendment to the Constitution of the United States and in violation of the provisions of the National Labor Relations Act.

4. Because the said order, rulings and action of the Board and Trial Examiner are based upon a misconception of the holding of the Circuit Court of Appeals referred to in said order, and upon a misapplication by the Board of the Court's holding to the Respondent's Application for the designation of another Trial Examiner, in that the Court was not (as the Board assumes) dealing with the specific question presented by said Application, to wit, [fol. 625] whether the bias and prejudgment by the Trial Examiner of and toward the particular type of evidence to be adduced at the further hearing, is such that he cannot judicially and fairly appraise and act upon same as contemplated by the National Labor Relations Act and by the law of the land.

5. Because the only cure for the type of bias and prejudgment shown to exist in the mind of the Trial Examiner, James C. Batten, of and toward the type of evidence to be adduced in this further hearing, is a hearing before another Trial Examiner, of which the Board has many.

6. Because said order, rulings and action of the Board and Trial Examiner, if and in so far as same may be a matter resting in the sound discretion of the Board, constitute an abuse of such discretion under the circumstances here existing.

## II.

## Application for Continuance.

7. Respondent excepts to the order, rulings and action of the National Labor Relations Board on July 8, 1942 (and of the Trial Examiner in pursuance of said order) denying Respondent's application for a continuance of this hearing for the reason that under the facts shown such action constitutes an abuse of the sound discretion of the Board and Trial Examiner; and denies respondent a fair and adequate opportunity to present its case.

JAMES A. REED,  
R. J. INGRAHAM,  
WM. S. HOGSETT,  
Attorneys for Respondent  
Donnelly Garment Company.

[fol. 627] (Board's Exhibit No. 1-RRRRR.)

Case No. C-1382—Date 8/4/42.

(Exceptions of Intervener, Donnelly Garment Workers' Union, to order denying Designation of another Trial Examiner and for a Continuance.)

The intervener, Donnelly Garment Workers' Union, excepts to the order made by National Labor Relations Board on July 28, 1942 (Board's Exhibit 1-GGGGG) denying the application made by respondent, Donnelly Garment Company, and joined in by this intervener, for the designation of another trial examiner and application for continuance, and excepts to the rulings and actions of the trial examiner pursuant to such order for the following reasons:

1. Because upon the facts said order, rulings and action are contrary to law.

2. By said order intervener is denied due process of law contrary to the provisions of the Fifth Amendment of the Constitution of the United States in that intervener is denied a full and fair hearing before a fair and impartial tribunal because the trial examiner, James C. Batten, has formed a fixed conclusion in his mind that the evidence

which the Circuit Court of Appeals ordered received in this case has no probative value and should be given no weight or consideration.

[fol. 628] 3. Because the Board bases its order upon the erroneous assumption that the Circuit Court of Appeals ruled that trial examiner Batten was not shown to be biased or prejudiced whereas the Circuit Court of Appeals did not have presented to it and did not consider or rule upon the question of whether in receiving this evidence and making his findings and conclusions thereon and in making an intermediate report thereon said James C. Batten could act fairly and impartially and without a fixed opinion that such evidence was entitled to little or no weight or value.

4. Because said order in denying the continuance was, under the circumstances shown, an abuse of discretion upon the part of the Board.

FRANK E. TYLER,  
LUCIAN LANE,  
GOSSETT, ELLIS,  
DIETRICH & TYLER,

Attorneys for Intervener, Donnelly  
Garment Workers' Union.

[fol. 629] (Board's Exhibit No. 1-YYY.)

Case No. XVII-C-371.—Date 6/12/39.

Rulings of the Trial Examiner.

United States of America.

Before the National Labor Relations Board, Seventeenth  
Region.

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union;  
and

Donnelly Garment Workers' Union,  
Party to the Contract.

## Case No. XVII-C-371.

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; the Donnelly Garment Workers Union as the Intervener; the International Ladies' Garment Workers' Union as the Union.

2. On June 7, 1939, after the filing of an amended complaint, the respondent at the hearing moved (Board's Exhibit No. 1-SSS) to dismiss the complaint as amended. The motion is hereby denied.

3. On June 7, 1939, the respondent filed at the hearing a motion (Board's Exhibit No. 1-TTT) to strike from the complaint as amended paragraph 4 A and all of the subparagraphs (a), (b), (c), (d), and (e) thereof and paragraph 5, subparagraph (c). The motion is granted as to paragraph 4 A. and the subparagraphs (a), (b), (c), (d), and (e). The motion is ~~denied~~ as to paragraph 5, subparagraph (c).

4. On June 7, 1939, at the hearing, the Intervener orally moved (to be submitted in writing and marked Board's Exhibit No. 1-UUU) to strike paragraph 4 A from the [fol. 630] complaint as amended. The motion is hereby granted.

[fol. 632] 5. On June 5, 1939, Union's counsel orally moved (to be submitted in writing and marked Board's Exhibit No. 1-QQQ) to strike certain parts of the respondent's answer. Ruling is reserved on the motion. However, respondent is requested to submit a written statement of the evidence it would offer to prove the parts of the answer set forth in the motion to strike. Such written offer may be submitted at any time during the course of the hearing. After an examination of the offer of proof, the undersigned will rule on the Union's motion to strike.

See Rulings of Trial Examiner.  
Board's Exhibit 1-SSS.  
J. C. Batten, Trial Examiner.

7. The answer of the respondent (Board's Exhibit No. 1-JJJ), parts A and B, allege certain reasons for the dismissal of the complaint. The respondent is requested to submit a written statement of the evidence it would offer to prove the allegations set forth in parts A and B.

See Rulings of  
Trial Examiner.  
Board's Exhibit  
1-SSS.  
J. C. Batten, Trial  
Examiner.



Such written offer may be submitted any time during the course of the hearing. After an examination of the offers of proof, the undersigned will make such ruling as is appropriate to the disposition of requests for dismissal. Part C of respondent's answer purports to be a petition for investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act. Such petition cannot be received or considered in this proceeding.

JAMES C. BATTEN,  
Trial Examiner.

Dated: June 8, 1939.

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[fol. 634] (Board's Exhibit 1-SSSS.)

United States Of America

Before The National Labor Relations Board  
Seventeenth Region

In the Matter of

Donnelly Garment Company  
and

International Ladies' Garment Workers' Union  
and

Donnelly Garment Workers' Union, Party to the Contract

Rulings Of The Trial Examiner

Case No. XVII-C-371

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; Donnelly Garment Workers' Union as the intervener; and the International Ladies' Garment Workers Union as the Union.

2. On July 15, 1939, the hearing in the above entitled matter closed for the taking of oral testimony. In the record of June 15 (pages 3098 to 3116), certain exhibit numbers were reserved for the submission of offers of proof, testimony to be offered from the National Recovery Administration case and Judge Miller Federal Injunction case, and other matters. All matters having been submitted and made a part of the record, the undersigned makes the following rulings thereon:

(a) Board Exhibit 28, by stipulation a true and accurate reflection of the facts and figures of all of the respondent's time-workers' pay-roll records to whom it purports to refer for the period April 15, 1937 to July 15, 1937, will be received in evidence. (Board Exhibit 1-uuuu is respondent's objection to Board Exhibit 28).

(b) Board Exhibit 1-tttt is a motion to amend the amended complaint. The motion is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion [fol. 635] to amend the amended complaint). Board Exhibit 30-a, a motion to amend the offer of proof, providing the motion to amend the amended complaint is granted (Board Exhibit 30) by inserting a paragraph, is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the offer of proof.)

(c) Stipulation of the parties making no objection to Board's motion to conform the amended complaint to the proof. Motion is granted. The stipulation is hereby made a part of the record and designated as Board Exhibit 1-vvvv.

(d) Stipulation of the parties providing for the filing of an offer of proof by respondent. The stipulation is hereby received and made a part of the record and designated as Board Exhibit 1-www. The offer of proof attached to the stipulation is hereby made a part of the record and designated as Board Exhibit 1-xxxx. The offer is refused.

(e) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 6, reserved ruling on the Union's motion (Board Exhibit 1-qqq) to strike certain parts of respondent's answer and requested respondent to file offer of proof with respect to the motion to strike. The motion to strike is granted.

(f) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 7, requested the respondent to submit offers of proof on Parts A and B of respondent's answer (Board Exhibit 1-jjj). The respondent stated in the record that no offer of proof would be made on Part A of the answer. The request for dismissal of complaint in Part A of the answer is denied. The offer of proof sub-

mitted by the respondent on Part B of the answer is refused. (Board Exhibit 1-nnnn.)

(g) Respondent's offer of proof, Board Exhibit 1-jjjj, was submitted because of a definite ruling of the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(h) Respondent's offer of proof, Board Exhibit 1-oooo, was submitted because of a definite ruling by the Trial Examiner as to the admissibility of certain evidence, and [fol. 636] in so far as the offer contemplates matters barred by the ruling, it is refused.

(i) Intervener's offer of proof, Board Exhibit 1-rrrr, was submitted because of definite rulings by the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(j) Board's objections to NRA-JMC Exhibit 3, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(k) Board's objections to NRA-JMC Exhibit 8, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(l) Respondent's objections, Board Exhibit 1-uuuu, Part 4, to Board's and Union's NRA-JMC Exhibit 17, is overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(m) Respondent's offer of evidence (NRA-JMC Board Exhibit 17) from the record in the Judge Miller Federal Injunction proceeding is received without objection. Acceptance of the testimony is not intended to enlarge the

issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

3. Board Exhibit 1-ssss was reserved for the "Rulings of the Trial Examiner" and Board Exhibit 1-ssss is hereby made a part of the record.

4. You are further advised that the hearing in this matter is closed.

Dated: August 14, 1939.

JAMES C. BATTEN,  
Trial Examiner.

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[fol. 637] (Intermediate Report of Trial Examiner dated October 7, 1939.)

United States of America.

Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

Upon charges dated August 9, 1938, and amended charges, duly filed by International Ladies' Garment Workers' Union, herein called the Union, and acting pursuant to proper authority, the National Labor Relations Board, herein called the Board, by Paul F. Broderick, is Acting Regional Director for the Seventeenth Region, issued its complaint dated April 27, 1939, against the Donnelly Garment Company, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent, the Donnelly Garment Workers Union, herein called the Independent, and the International Ladies' Garment Workers' Union.

The complaint as amended, alleged that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act.

Concerning the unfair labor practices, the complaint as amended, alleged in substance that the respondent (a) on [fol. 638] or about February 12, 1935, formed the Donnelly Loyalty League for the purpose of preventing the organization of its employees by the International Ladies' Garment Workers' Union; (b) that on April 27, 1937, the Donnelly Loyalty League was succeeded by the Donnelly Garment Workers Union; (c) on or about April 27, 1937 and thereafter, the respondent has dominated, supported and interfered with the labor organization known as the Donnelly Garment Workers Union; (d) during March, April and May 1937, encouraged and permitted supervisory and other employees, acting in the interest of the respondent, to solicit members, hold meetings, and engage in concerted activities in behalf of the Donnelly Garment Workers Union on company property without loss of pay; (e) entered into a closed-shop agreement with the Donnelly Garment Workers Union, creating as a condition of employment membership in that union, thereby depriving its employees of their rights under the Act; (f) on or about April 23, 1937, respondent discharged and thereafter refused to reinstate Sylvia Hull, and on or about April 26, 1937, respondent discharged and thereafter refused to re-employ May Fike, employees of the respondent, for the reason that they had joined and assisted the International Ladies' Garment Workers' Union; and (g) by the above, and by statements of its officers and supervisory employees, has urged, persuaded and warned its employees to refrain from becoming members of the International Ladies Garment Workers' Union; by keeping members and meetings of the International Ladies' Garment Workers' Union under surveillance; and by instigating and permitting respondent's employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the International Ladies' Garment Workers' Union, has interfered with, restrained and coerced its em-



ployees in the exercise of their rights guaranteed in Section 7 of the Act.

[fol. 639] The respondent's answer admitted certain allegations concerning its corporate structure and business, and denied that it had engaged in or was engaging in any unfair labor practices. Respondent affirmatively pleaded that the Board is without jurisdiction; that the Board has exceeded its authority by issuance of the complaint, thereby demonstrating its bias and prejudice against the respondent and collusion with the International Ladies' Garment Workers' Union; and that the International Ladies' Garment Workers' Union, in its organizational campaign in Kansas City, has interfered with, restrained and coerced respondent's employees. The answer included in form a petition for investigation and certification of representatives of the respondent's employees pursuant to Section 9 (c) of the Act.

Prior to the hearing, the Donnelly Garment Workers Union filed with the Acting Regional Director a petition for leave to intervene. The Acting Regional Director granted the petition in so far as the intervenor's interest may appear.

The undersigned, as duly designated Trial Examiner of the Board, conducted a hearing from June 5 to July 15, 1939, at Kansas City, Missouri, at which place all parties were afforded an opportunity to participate in the hearing, to call, examine and cross-examine witnesses and introduce other evidence.

During the course of the hearing, the respondent and the intervenor made several motions to dismiss the amended complaint. Decision on the motions having been reserved, the motions are hereby denied. The respondent, at the close of the Board's case, the respondent's case, and again at the close of the hearing, moved to dismiss certain paragraphs of the amended complaint. The motions are granted as to paragraph 11, subparagraphs d, g, g-1, i, k, n, o, and p of the amended complaint (Board Exhibit 1-~~kkk~~). The motions in all other respects are denied.

[fol. 640] At the conclusion of the hearing, the parties were afforded a reasonable opportunity to argue orally before the undersigned. The parties were further advised

that they might file briefs with the undersigned. The parties did not care to avail themselves of the opportunity to argue orally before the undersigned, and at the request of the undersigned, memorandum briefs were filed by the respondent, the intervenor and the Union, and have been considered in connection with this report.

Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following specific findings of fact:

### Findings of Fact.

#### I. Business of the Respondent.

1. The Donnelly Garment Company, a Missouri corporation with its office and factory (respondent at times operates a small factory in St. Joseph, Missouri) located in Kansas City, Missouri, is engaged in the designing, manufacturing, selling and distribution of ladies garments, chiefly of cotton, wool, acetate, rayon and linen, under the trade name of "Nelly Don." In the years 1937 and 1938, the respondent's sales grossed over \$4,000,000 per year, 96 per cent of which sales was to customers in States other than the State of Missouri. The respondent has purchased over 99 percent of its raw materials—cotton, wool, acetate, rayon and linen—in States other than the State of Missouri.

2. The respondent's departments, with those in general charge, are as follows: production, Lee Baty; merchandising, retail store and receiving, Elizabeth Reeves; office manager, J. B. Bachofer; and employment, Ella Hyde. The respondent's officers are: president and treasurer, Mrs. James A. Reed; vice president, Alex. C. Green; and secretary, R. J. Ingraham.

[fol. 641] 3. The Donnelly Sales Company, a Missouri corporation, organized in 1935, is exclusively engaged in the business of selling and distributing ladies garments manufactured by the respondent. The officers of the sales company are: president, Alex. C. Green; vice president and treasurer, Lee Baty; and secretary, R. J. Ingraham.

## II. The Labor Organizations Involved.

4. The International Ladies' Garment Workers' Union is an unaffiliated labor organization and admitting to membership the plant employees of the respondent. The Donnelly Garment Workers Union is an unaffiliated labor organization and admitting to membership all the employees of the respondent.

## III. The Unfair Labor Practices.

### A. Events prior to April 27, 1937.

5. Prior to the summer of 1934, no effort was made to unionize the employees of the Donnelly Garment Company. At this time the International Ladies' Garment Workers' Union established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers. During the summer and fall of 1934, at least a dozen of the employees of the Donnelly Garment Company joined the International Ladies' Garment Workers' Union. The Union, in the early part of its campaign, held an open meeting at the Eagles Hall, and Mrs. Elizabeth Reeves, production manager, Rose Todd and other supervisory employees of the respondent, attended.

6. On December 6, 1934, the Union filed a charge against the Donnelly Garment Company under Section 7 (a) of the National Industrial Recovery Act, complaining that eight girls had been laid off by the company because of their joining the Union. A hearing on these charges was held in Kansas City, Missouri, beginning in April 1935. The taking of testimony was completed and before a decision was made by the N. R. A., the Supreme Court declared the N. R. A. unconstitutional.

[fol. 642] 7. One of the complainants named in the charge was Glynn Brooks who had worked for the Donnelly Garment Company from December 1924 to July 1934, during all of which time she had been a competent and dependable operator. Some time in June 1934, Glynn Brooks invited 12 or 13 girls to meet at her home in Kansas City. At this meeting the girls discussed the advisability of joining and forming a local of the Union. Subsequent to this meeting, all of the girls who attended, except one, were either laid

off or discharged by the Donnelly Garment Company, Glynn Brooks' employment being terminated on July 12, 1934. The 12 girls whose employment was terminated, had in most instances been working in the main plant of the Donnelly Garment Company. On or about the time these girls joined the Union, they were all transferred to a temporary building which was used by the Donnelly Garment Company during the busy season. When the busy season was over and the use of the temporary building was discontinued, the girls, most of whom had several years service with the respondent, were laid off, and girls employed in the main plant with less service were retained. While no strict seniority system was followed in the plant, it was the customary practice to provide regular employment for the older and more experienced operators.

8. The organization campaign of the Union is directly related to a meeting which was held at the home of Martha Gray on February 5, 1935. At this meeting attended by 46 persons, the Donnelly Loyalty League was organized. There is a conflict as to whether the steps taken to form the League occurred at the home of Mrs. Gray or at a mass meeting of the employees shortly thereafter. That meeting was reported in the Nelly Don Athletic Association News bulletin of February 13, 1935. The News stated that "900 join Loyalty League." Herbert Mutchler was asked to act as temporary chairman. It was announced that the formation of the League "was to refute untrue statements and propaganda circulated by the Union." At [fol. 643] the meeting Mutchler read an editorial from a February 16 issue of a magazine, which editorial is entitled "Protection in the Right not to Strike." The editorial defends the right of employees not to strike and critically speaks of labor agitators and pickets. The cards signed by the employees read as follows:

I, the undersigned, hereby pledge myself to become a member of the Nell Donnelly Loyalty League and to take part in the activities of said League to the best of my ability.

I have signed this pledge of my own free will and without coercion or intimidation of any kind.

The League's activities, outside of occasional social affairs, in most instances are coincidental with the efforts of the Union to organize the respondent's employees.

9. The Donnelly Loyalty League held its meetings on company property. All of the executives and supervisory employees of the respondent were members except Mrs. James A. Reed, president of the company, and Mr. Baty, the general superintendent. The members of the Donnelly Loyalty League paid no dues, no constitution or by-laws were adopted, so that the organization remained in a rather nebulous form to be called into use when the occasion required.

10. Herbert Mutchler, a supervisory employee, was president of the Donnelly Loyalty League for 2 years, and was succeeded by Rose Todd, also a supervisory employee of the respondent. Bertha Estes, who was secretary of the Donnelly Loyalty League in 1938, received no records of any kind from the former secretary and Miss Estes kept no records of any kind. The Donnelly Loyalty League, according to respondent's witnesses, was purely a social organization for the purpose of holding dances and social affairs.

11. Unquestionably, the League did hold dances and social affairs, but its primary function was to combat union [fol. 644] propaganda and this is clearly shown by its activities and the support which the respondent gave to the organization. For instance, while the League officers denied that they, as representatives of the League, prepared a Loyalty petition, it is clear that it was part of the Loyalty League's plan.

12. On March 2, 1937, a petition was circulated by several employees through the plant during working hours. In many instances the petition, after being brought to the sections, was passed from person to person for signature, while the machines were in operation. The Loyalty petition read as follows:

We, the undersigned, as member of the Donnelly Garment Company, wish to make it known that we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any



union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed.

This petition was signed by all of the employees except Elsie Graham Greenhaw, a stenographer who worked in the main office. Mrs. Greenhaw was requested by Pauline Shartzter to sign the petition during working hours. Mrs. Greenhaw refused to sign because of the statement "refuse to acknowledge any union labor organization," and stated to Miss Shartzter that as an employee of the Donnelly Garment Company she had a right to believe in a union or not as she pleased. Two other employees who refused to sign the petition at first, Sylvia Hull being one of those, were later permitted to sign the petition and thereafter their names were removed from the petition.

13. When the Loyalty petition was circulated through the plant, there was some doubt in the minds of those who circulated the petition whether the instructors who had charge of the sewing sections employing about 40 operators, should sign the petition. When Inez Warren, Pauline Shartzter and Mary Sprofera, the committee who circulated the Loyalty petition, presented the petition to Mrs. [fol. 645] Reed at her home in Kansas City, Mrs. Reed apparently noticed that the instructors had not signed the petition and she suggested to the girls that she would like to have the signatures of all the employees to put in the cornerstone of her new building. The committee then went back and secured the signatures of the instructors. At the time that the Loyalty petition was presented to Mrs. Reed at her home, a newspaper photographer was there and took a picture, which would indicate that Mrs. Reed or the committee had made the prior arrangements for the necessary publicity. Mr. Baty, the plant superintendent, testified that he was present at Mrs. Reed's home when the petition was presented; he insisted that he was in Mrs. Reed's living room discussing business matters when the petition was presented, while the weight of the testimony discloses that Mrs. Reed was out in her garden when they presented the petition. This is typical of the large number of inconsistencies in the testimony of the respondent's witnesses with respect to many events that occurred during 1935, 1936 and 1937.

14. The Donnelly Loyalty League, on March 18, 1937, held a meeting in the plant of the respondent which meeting, according to Rose Todd, then president of the League, was entirely a spontaneous meeting. Rose Todd testified that the meeting of March 18 was not a meeting of the Loyalty League but merely a meeting of the employees. However, the meeting was called by the officers of the Loyalty League; a representative of the Loyalty League, Rose Todd, was chairman of the meeting; and the meeting was called by notices sent to all of the various departments through the regular messenger service of the respondent, which notices when they reached the sections, were passed out by the instructors.

15. The meeting was held on the second floor of the building occupied by the respondent, and the records of the Kansas City Chair Company indicate that the chairs which were ordered for the meeting were ordered by the Donnelly Loyalty League. The testimony is rather conflicting as to just what transpired at the meeting, but there [fol. 646] is no denial of the fact that Mrs. Hyde, employment manager, and other supervisory employees, attended the meeting. Rose Todd, who acted as chairman, while denying that Mrs. Reed knew that there was a meeting to be held, selected a committee to go to Mrs. Reed's office and invite Mrs. Reed to speak at the meeting. Mrs. Reed did come to the meeting and was prepared for the invitation as evidenced by the fact that she read a letter she had received from the International Ladies' Garment Workers' Union. This clearly indicates to the undersigned that the letter of the International Ladies' Garment Workers' Union was the occasion for another meeting of the employees of the respondent and that the Donnelly Loyalty League and its officers were used for that purpose.

16. Mrs. Reed then made a short extemporaneous talk. There is much testimony in the record to indicate that Mrs. Reed's talk was directly connected with the Union's letter which was read. Mrs. Reed made it very clear to the employees that she was opposed to outside unions and the union referred to was the International Ladies' Garment Workers' Union. Mrs. Reed referred to the Loyalty petition in which all of the employees had advised Mrs. Reed

that they refused to recognize any union labor organization. It is further clear from Mrs. Reed's talk, particularly when she referred to the fact that she would not permit any union to force her employees to join a labor organization; that the employees, as far as the management was concerned, should not consider an outside union. Mrs. Hyde testified: "She (Mrs. Reed) said International, Dubinsky or any other 'buttinsky' would not intimidate her into making her compel or force her employees to join any labor organization which they did not choose." As will later appear in Section B of this report, the meeting of March 18 unquestionably laid the groundwork for the formation of the Donnelly Garment Workers Union on April 27, 1937.

17. Elsie Graham Greenhaw testified that Mrs. Reed spoke at the meeting of March 18 and stated that she would close her factory before she would permit it to be union- [fol. 647] ized. The undersigned accepts this testimony of Mrs. Greenhaw as correct for the reason that Mrs. Greenhaw, of all of the witnesses who testified at the hearing, was a disinterested party. Mrs. Greenhaw was not a member of any organization while employed at the Donnelly plant. Her testimony was given in a straightforward and unhesitating manner. She has always been employed in very responsible positions and left the respondent's employment with a good record. A further reason for the acceptance of her version is that the testimony of the respondent's witnesses with respect to the calling of the meeting and the circumstances surrounding it, varied substantially.

18. On February 26, 1937, there appeared in the Kansas City Times, an article which stated that the International Ladies' Garment Workers' Union was going to intensify its organizational activities, with particular reference to the Donnelly Garment Company. On that day and within a few days subsequently, Mr. Baty, the plant superintendent, increased the salaries of a large number of the employees of the Donnelly Garment Company. This is further evidence of the fact that meetings of the Donnelly Loyalty League and action of the respondent was always timed with some activity of the International Ladies' Garment Workers' Union.

19. There was a great deal of testimony concerning a meeting during the latter part of March or the first part of April 1937, at which meeting Rose Todd, who was then president of the Donnelly Loyalty League, advised the employees that she, Sallie Ormsby and Hobart Atherton, had employed a firm of attorneys in Kansas City to see what could be done in securing an injunction to protect the employees of the Donnelly Garment Company. Rose Todd testified that at this meeting a plan was proposed to collect from every employee 50 cents as she and the balance of the committee had promised the attorneys a retainer fee of \$500. There was a substantial amount of conflicting testimony concerning this meeting. No one [fol. 648] except Mr. Smith, a machinist employed by the respondent, was able to definitely place the date of the meeting, he placing the date as March 30, 1937. Mr. Smith's testimony with respect to the date of the meeting or any of the transactions of the meeting cannot be accepted. His recollection of what transpired at the meeting was very hazy as was the testimony of all of the respondent's witnesses.

20. The undersigned is of the opinion that no such meeting was ever held and that the date of the latter part of March or the first part of April was used in order that it might be contended that the \$500 paid the attorneys—which was paid by check of the Donnelly Loyalty League—was for services rendered the employees and not to be connected with the formation of the Donnelly Garment Workers Union. This position is untenable as the actual records disclosed that there was no such meeting; that the 50 cents collection was made subsequent to the formation of the Donnelly Garment Workers' Union; and that the Donnelly Loyalty League paid the retainer of \$500 to the attorneys for the formation of the Donnelly Garment Workers Union.

21. Rose Todd, in her testimony, did not disclose that she, on March 30, 1937, went to the First National Bank of Kansas City, Missouri, and borrowed \$1000, signing the note "Nell Donnelly Loyalty League," and that the \$500 paid to the attorneys was paid out of this account. The latest definite date on which any of the witnesses place



the meeting in the latter part of March, is March 30, the day Todd made the loan, and if it had been planned to collect the funds on that date, a loan would have been unnecessary, or if so Todd would have reported the loan. Rose Todd did not advise the employees at any of the meetings of this loan or of the payment of the retainer fee from the proceeds of the loan.

22. The testimony is clear that the employment of the attorneys and the raising of the funds was for the purpose of organizing the Donnelly Garment Workers Union. The [fol. 649] Donnelly Garment Workers Union and its formation and organization is inseparably tied up with the Donnelly Loyalty League. Rose Todd, who was president of the Donnelly Loyalty League during the early part of 1937, was the organizer of the Donnelly Garment Workers Union and did not resign as such until at least 30 days after the Donnelly Garment Workers Union was organized.

23. An incident occurred in the plant on April 23, 1937 which again demonstrated the activity of the Donnelly Loyalty League and the respondent's opposition to the organization of a union in its plant. Again the respondent attributes the incident to an article which appeared in a Kansas City paper. Sylvia Hull, an employee of the respondent and a member of the International Ladies' Garment Workers' Union, was selected to attend a union convention in Atlantic City as reported in the paper. On the morning of April 23, 1937, and after the girls were seated at their machines a number of employees appeared and singing Donnelly Loyalty League songs, congregated around her machine. The employees left and shortly thereafter another group of employees from several floors in the plant approached her and requested that she return the Donnelly Loyalty League pin which she refused to do unless they paid her 35 cents for the pin. Shortly thereafter, the girls returned, gave Hull 35 cents; and the pin was returned. At the request of Mrs. Hyde, Hull went to Hyde's office, followed by a number of the girls, in spite of the fact they had been ordered to return to work. Hyde's account of this affair is as follows:

So I went upstairs and I found a group of girls working in the section, same section as this Sylvia Hull, grouped



around her machine, and they were singing songs, and I suggested that since knowing about the notice that was in the paper the night before, that Sylvia Hull come down to the desk with me so that we could get these girls back to work and their remarks at the time were that they would not go back to work unless she left the building . . . asked girls to go back and girls instead, followed us down and when I asked them again to go to work, said they would when Hull went home, and then Hull said "I will go home. I didn't know the girls felt this way about it, or I wouldn't have done it."

Hyde stated that the refusal of the group to go back to their jobs was a refusal to work. None of the girls was ever disciplined in any way.

[fol. 650] 24. Later in the morning of April 23, 1937, there was another demonstration at which time Mr. Baty, the plant manager, and Rose Todd, president of the Donnelly Loyalty League, requested that Fern Sigler accompany them to the office. When Fern Sigler arrived at the office she was interviewed by Ella Mae Hyde, the employment manager, Mr. Baty, the production manager, and Rose Todd, president of the Loyalty League. There was a stenographer present who prepared a transcript of what was said at this conference. Rose Todd at this conference asked Fern Sigler how long she had belonged to the Union and wanted Miss Sigler to tell her "why you feel the way you do." Fern Sigler replied "that every employee has a right to join any organization they choose." Mrs. Hyde then stated: "It is perfectly all right, we have no objections." Fern Sigler replied: "An employer should be able to control their girls." Mr. Baty asked Fern Sigler "how did they find out you belonged to the union." Fern Sigler replied: "I wore my pin." Mrs. Hyde then asked: "Did you wear your Loyalty League pin?" Fern Sigler replied: "I haven't worn my Loyalty League pin for 2 weeks, I didn't wear either of them." Rose Todd advised Miss Sigler "time alters circumstances, personal opinions are incensed and it is a little difficult to keep that many people from expressing their opinions." Mr. Baty then suggested to Fern Sigler that she go home for a few days until things quiet down. Fern Sigler then said:

"It would be the same thing when I come back." Mrs. Hyde stated: "These girls won't stay at their machines as long as you are in that section." Rose Todd then asked: "What do you think you have gained that we haven't by joining the union." Further Miss Todd stated: "As president of the Loyalty League, I am not going to sell you on the idea that we are right but the majority will certainly rule in a case like this." Mr. Baty then said: "You will have to go temporarily, it is not a matter of choice. We don't wish to have a disturbance here. People from every floor in the factory were down at your machine a while ago." Fern Sigler then asked whether she would [fol. 651] be paid for the time off. Mr. Baty then replied: "Why do you think we should pay you while you are off? You joined this organization and these girls are much opposed to it. It is no fault of the company that they won't work around you." Fern Sigler replied: "Employers is supposed to be able to keep the employees at work." Mr. Baty replied: "We don't go into the Wagner Act. We are just running our business here and not a law office." Rose Todd then stated: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always." Mr. Baty then closed the conference by stating: "I am going to ask you to go home temporarily and Mrs. Hyde will call you back when I think it is safe for you to come back."

25. During the Hull demonstrations Mrs. Allison the instructor in charge of the section and her assistant, Rose Hendricks, were present. With knowledge that girls were present from other sections and floors, no effort was made by these supervisory employees to control the girls. Pearl Collins, Fern Sigler's instructor was present at the time of the Sigler disturbance. Collins testified: "Well, I merely asked the girls to leave and go back to work" and when asked if the girls left, "Well, not immediately, but then they soon left." Mr. Baty when he appeared at Sigler's section saw the girls grouped around Sigler and did not at that time or later reprimand any of the employees taking part in the demonstration.

26. Mrs. Hyde, the employment manager, testified that Sylvia Hull and Fern Sigler did not violate any rules of

the company and that the girls who congregated around the machines of the girls were not disciplined in any way.<sup>1</sup>

27. The organization of the Donnelly Loyalty League and the support and encouragement which it received from the respondent and its agents, and more particularly the [fol. 652] fact that the Donnelly Loyalty League was only active on those occasions when it was necessary to call to the attention of the employees some activity of the International Ladies' Garment Workers' Union, while it does not indicate that the Donnelly Loyalty League was a labor organization, it most assuredly laid the proper foundation for the formation of the Donnelly Garment Workers Union on April 27, 1937.

28. The undersigned finds that the respondent by all of the activities as set forth herein, organized and dominated the Donnelly Loyalty League as a medium to discourage membership in I. L. G. W. U. and further finds that such activities have interfered with, coerced and restrained its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

#### B. The Donnelly Garment Workers Union:

- (1) The formation and administration of the Donnelly Garment Workers Union.

29. The meeting of April 27, 1937 was the organizational meeting of the Donnelly Garment Workers Union. Cameron Herold, an employee of the respondent and a graduate of junior college, was unable to distinguish between the Donnelly Loyalty League meeting of March 18, and the organizational meeting of the Donnelly Garment Workers Union held on April 27, 1937.

Q. Do you remember any meeting of the Donnelly Garment Workers Union?

A. I do.

Q. Describe that meeting. How many meetings were there during this period that you can recall?

A. The first meeting was about the middle of March.

<sup>1</sup>The events following the Hull incident will be fully covered under Section C — Discharges.

30. Mrs. Lynn Davis stated that there was a meeting called or "there was employees went to see a lawyer and to see what we could do about forming a union of our own." This statement of Mrs. Davis indicates that the employees in the plant were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment [fol. 653] Workers Union. Rose Todd and several others of those who were active in the organization of the Donnelly Garment Workers Union, attempted to show that the employment of the attorneys in the first instance was for the purpose of securing an injunction and not with relation to the organization of the Union. The testimony of Mrs. Davis would indicate that the employees were not of this opinion.

31. The Supreme Court of the United States, on April 12, 1937, in several decisions, upheld the constitutionality of the National Labor Relations Act. Hobart Atherton stated that the idea of an independent union originated between April 12 and 20, and further, that on April 26, 1937, he met with Rose Todd at her apartment and discussed the advisability of organizing an independent union on the following day. There must have been some discussion of the situation in the Donnelly plant, at least on April 13, 1937 when Rose Todd interviewed Mr. Tyler, the attorney who was later employed to organize the Donnelly Garment Workers Union. Rose Todd testified that the interview was with regard to an injunction, but the testimony is clear that Tyler was employed for the purpose of organizing an independent union.

32. Rose Todd's testimony as to why the meeting of April 27, 1937 was called, is decidedly different and in conflict with testimony of Hobart Atherton. Rose Todd's testimony indicates the meeting just happened.

33. Rose Todd was president of the Donnelly Loyalty League during 1937 and did not resign as president until about a month after the organization of the Donnelly Garment Workers Union on April 27, 1937, so that she, as a supervisory employee,<sup>2</sup> continued as the directing influence in the latter organization.

<sup>2</sup>Todd's relationship to respondent is fully set forth in Part III, Section B-2.

[fol. 654] 34. The April 27 meeting was called immediately after work on the second floor of a building which was occupied by the Donnelly Garment Company and in the meeting room which had been formerly used by the Donnelly Loyalty League. It is true that the Donnelly Garment Company at the time did not have the second floor leased, but the employees in the plant were notified by the interdepartmental phone system of the respondent that there was to be a meeting. Many of the employees went to the meeting in their uniforms, and as Claris Martin testified, "the meeting was held immediately after working hours and I went in my uniform." Pearl Collins, an instructor, stated a message came that Rose Todd was calling a meeting of employees. Rose Todd stated, "In using our house telephone system in that manner, we have what we call floor girls or thread girls in each department. It is absolutely her duty to answer the phone and convey any message that might be given. That was what was done. The telephone operator called and said there would be a meeting on the second floor after work for the employees."

35. The testimony is undisputed that Rose Todd, a supervisory employee, called the meeting of the employees on April 27 and presided at the meeting. Although Rose Todd attended an open meeting of the International Ladies' Garment Workers' Union in 1935, referring to this meeting she testified: "Well, I just never had known anything much about labor organizations and I just—it was an open meeting as I understood and I just went." When Rose Todd opened the April 27 meeting she clearly indicated her dissatisfaction with unions by stating: "My first personal distress was the use of the word 'union'. You probably don't like it better than I do but you must see by this time that to meet the demand that can be made by outside unions, that our organization will have to be a union."

36. Nellie Stites came to the meeting in her uniform as well as a large number of the others. Nellie Stites was unable to distinguish between the meetings of the Donnelly [fol. 655] Loyalty League and the Donnelly Garment Workers Union, and after the organization of the union she did not know the representative of the union for her



department. The employees were definitely unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers Union. Mrs. Lynn Davis testified that she paid dues to the Loyalty League. This is another indication of the inability of the employees to differentiate between the Donnelly Loyalty League and the Donnelly Garment Workers Union. As further evidence of this fact, the chairs which were rented from the Kansas City Chair Company for the meeting of April 27, 1937 were ordered by the Donnelly Loyalty League evidenced by a notation on the margin of the books of the Kansas City Chair Company, so it is not surprising that the employees were unable to distinguish between these two organizations.

37. The organizational meeting lasted about 1 hour and during this time the employees, according to the minutes of the meeting, voted to form an independent union; Rose Todd and Mr. Tyler addressed the meeting; adopted by-laws and the name Donnelly Garment Workers Union; appointed a nominating committee for representatives; elected 9 representatives; passed out cards for the signatures of the employees; and collected about 1300 signed cards.

38. Rose Todd, in her opening statements, stated that it was a gratifying sight to see so many present and that as chairman of the committee of employees, she called the meeting to discuss a matter of vital importance and clearly indicated in her talk, as recorded in the minutes of the meeting held April 27, 1937, that she had consulted with Mr. Tyler who acted as attorney for the employees, and "more and more these past few weeks it has seemed to me that we are approaching the time when it will be necessary to form an organization that will give us the protection that we need." She further explained that the Loyalty League, being a purely social organization, will not take care of the situation, "that another organization is necessary to give us representation to definitely confer with the [fol. 656] proper representatives of our company at times when we feel that is necessary." She further stated: "our new organization will be called the Donnelly Garment Workers Union." Miss Todd then introduced Mr. Tyler who stated: "Some weeks ago several employees came to my office and employed Mr. Gossett and myself as legal

advisers of the employees so that I am in fact at this moment acting as an attorney for you or for many of you even though you have never seen me before. First I want to say that I represent no labor union and in connection I represent no employer. You may believe in unions or you may disbelieve in unions and still agree with the advice I am now about to offer you. The reason for this advice I am going to give you is that we believe it is to your own best interest to organize your own individual unaffiliated plant union of the employees of the Donnelly Garment Company and proceed with such a union." Mr. Tyler went on to explain that one of the reasons for the organization was the fact that the International Ladies' Garment Workers' Union sent a representative to the national convention to represent the Donnelly employees and "in order to stop this and to make it clear that you are speaking for yourselves through your own representatives whom you choose we think your own union is desirable." Mr. Tyler further stated: "I do not think that this action can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step and that isn't an unfriendly act to them. In fact, it is much better for them and yourselves for you to have your own union with your own representatives rather than having a group trying to represent outsiders from New York." Rose Todd then said: "Well, we are together as an entire group of employees. Let's form this organization," and a motion was then made that they form an independent unaffiliated plant union.

39. A motion was then made that a nominating committee be appointed to select a general chairman and group chairman. This motion was passed, the nominating committee retired, and in 15 minutes reported back to the chairman the nomination of nine persons who were voted upon en masse and all elected. Those elected were general chairman Rose Todd, Hobart Atherton, representative of the workers in general, and of the 9, 2 were operators to represent 800 employees of the respondent of the total of 1200. The bylaws were read by Mr. Tyler who had prepared the bylaws without consultation with Rose Todd and Hobart Atherton who were the organizers of the Union. Atherton testified that he had never seen

the bylaws in their entirety before the meeting. Rose Todd testified that Mr. Tyler wrote up the bylaws and that she made no suggestions with respect to the bylaws. The membership is strictly limited to the Donnelly Garment Company employees. The respondent suggested at a later date, during the negotiations for an agreement, that before any employee is eligible for election as a representative or chairman, he must have been employed for 1 year by the Donnelly Garment Company; this provision was then inserted. According to Mr. Tyler, this was to prevent any outsider who may become employed in the Donnelly Garment Company from being elected to an office in the Union and operating as a disruptive force in the organization.

40. As further proof of the fact that the employees were not only unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers Union, they were not familiar with the bylaws or the method of electing officers of the Donnelly Garment Workers Union. The officers are elected by the nine representatives, but Mrs. Lynn Davis testified that the officers were elected at the meeting of April 27, 1937.

41. The Donnelly Loyalty League, after the organizational meeting of the Donnelly Garment Workers Union on April 27, 1937, did not discontinue its operations. A meeting of the Donnelly Garment Workers Union was held on May 25, 1937, and according to the minutes of the meeting, Rose Todd read an article which appeared in the Kansas City paper that the International Ladies' Garment Workers Union had opened up headquarters to organize the Donnelly Garment Company. She announced at the meeting that the working agreement had been sent to Mrs. Reed and that they expected the agreement to be in Mrs. Reed's hands shortly. Rose Todd further announced a dance at the Play-Mor Friday night, June 11, and Hobart Atherton announced the arrangements for the dance and the importance of attending, and according to the minutes the meeting then adjourned.

42. Marjorie Green prepared the minutes of this meeting. There was a great deal of conflicting testimony with

respect to the meeting of May 25, 1937. Mrs. Elsie Greenhaw testified that she attended the meeting of the Donnelly Garment Workers Union on May 25, 1937 in accordance with a request from Marjorie Green. Mrs. Greenhaw prepared minutes of this meeting and a copy of the minutes clearly disclosed that the meeting started out as a Donnelly Garment Workers Union meeting and during the latter part of the meeting was conducted as a Donnelly Loyalty League meeting. Elsie Greenhaw's minutes of this meeting are accepted as correct and her testimony with respect to this meeting is accepted. Her testimony was convincing and straightforward, and although many attempts were made by the respondent and the intervenor to discredit her testimony, it stands as a logical and plausible account of the events of the meeting of May 25, 1937. There are many details in the testimony of the respondent's and intervenor's witnesses in their effort to explain the Greenhaw minutes which are not consistent with the minutes of the Donnelly Garment Workers Union, or with the chronology of events which preceded and followed the meeting of May 25, 1937.

43. The minutes of the meeting of May 25, 1937 are accepted as written by Mrs. Greenhaw, for at least on one occasion Marjorie Green who was secretary of the Donnelly Garment Workers Union, testified that she did not take the minutes of the meeting of April 27—other witnesses of the respondent testified that she did—but Miss Green did say that she changed the minutes of the meeting of April 27 as written by a person she could not recall and retyped the minutes.

[fol. 659] 44. Unquestionably, the Donnelly Loyalty League was an organization of all of the employees of the respondent including supervisory employees organized in an effort to prevent the unionization of the Donnelly Garment Company by the International Ladies' Garment Workers' Union, and when it was found to be ineffective, several of the supervisory employees—Rose Todd and Hobart Atherton—employed attorneys and organized the Donnelly Garment Workers Union. The Donnelly Loyalty League and the Donnelly Garment Workers Union were inseparably tied up in the financing, organization, formation and administration of the Donnelly Garment Workers



Union. Reference has been made heretofore to certain supervisory employees and the responsibility of the respondent's executives for the formation of both organizations. The relationship between the Donnelly Garment Company and the Donnelly Loyalty League and the Donnelly Garment Workers Union, as fully set forth herein, can result in only one conclusion, that is, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Loyalty League and the Donnelly Garment Workers Union and the undersigned so finds.

(2) Relationship between the Donnelly Garment Workers Union and the respondent.

45. There is an unbroken relationship between the respondent and the Donnelly Loyalty League and the Donnelly Garment Workers Union from the time of the organization of the Donnelly Loyalty League on February 5, 1935.

46. Martha Gray, at whose home the Donnelly Loyalty League was started, is in charge of the respondent's so-called "outlet store." Rose Todd testified: "I assume you would say that she is in charge. The only charge I guess there could be is over the remnants or things of that type sent down there for them to sell. There are about six women down there that do that selling. I don't imagine the direct responsibility of that store is with Mrs. Gray. I think it would originate in the department where the material is purchased." Rose Todd further testified that she had read announcements of sales in the outlet store [fol. 660] coming out under Mrs. Gray's name. Mrs. Gray has been in charge of the retail store for 7 years and while she and the respondent deny that she is in a supervisory capacity, the facts clearly show that she is a supervisor.

47. The Donnelly Loyalty League admitted to membership all of the respondent's employees. Mrs. Hyde, the employment manager, Mrs. Reeves, formerly plant superintendent, and now in charge of miscellaneous departments, were members, and all the plant employees were familiar with the fact that such executives and supervisory officers were members.



48. Rose Todd first met Mrs. Reed when Mrs. Reed was a patient in one of the hospitals in Kansas City, Rose Todd being her nurse. Todd had been employed by the Donnelly Garment Company for 13 years, having left the Donnelly Garment Company January 1, 1931 and returning August 1, 1933. Rose Todd was an operator for several months and then helped on the floor as a thread girl. Todd at times has acted as an instructor. Todd testified that the company does not use the term "supervisor" but that they do have an individual that they call an instructor in charge of approximately 40 operators who compose the sewing sections, and a second girl that might perhaps be called an assistant instructor. Since Rose Todd's re-employment on August 1, 1933, she has helped in various sections covering the entire plant. During this time Rose Todd had not been assigned to any particular department, being directly responsible to Mr. Baty, the plant superintendent. She has had a desk located on the seventh floor and her explanation is that she just happens to be there or wherever there is an empty desk.

49. Miss Todd talks to all the instructors and thread girls each day and it is her responsibility, as she states, to act as a sort of supply girl and go through the plant and check the work to see that every section has supplies. The instructors and thread girls do call her at times to furnish supplies when they run short.

[fol. 661] 50. Mr. Baty described Rose Todd's work: "She checks with the sections all over the plant looking for merchandise that is delayed—dresses and bundles—checks to see what they need in the way of thread, lace, buttons, or any other notions. For a period in 1938 she worked on some special work with Mr. Atchison" (who resigned as a member of the Donnelly Garment Workers Union because of being a supervisory employee). Mr. Baty further stated that Rose Todd received the same vacations as given the instructors, that is 3 weeks instead of 2 as given to the operators. Rose Todd was supposed to take her vacation in August 1937 but Baty stated that "he couldn't let Todd go in August as she was indispensable." Everett Sweeney, chairman of the board of the First National Bank of Kansas City, Missouri, has known Rose Todd for 10 or 12 years, having met her at his office.

Sweeney stated "she was a kind of all-around man for the company," and had come in on matters for the company for several years.

51. Mr. Baty and the other witnesses for the respondent deny that Rose Todd is in a supervisory position; there is little doubt but that she succeeded to at least a part of the duties of Mrs. Wherry, a former assistant plant superintendent, or as Mr. Baty stated, a general instructor. Mr. Baty testified that Rose Todd's job in the factory is a sort of go-between in the sections. In other words, instructors contact her and she notifies him instead of the instructors going direct to Mr. Baty, so that she, Rose Todd, is unquestionably one step above the instructors in their relationship to Mr. Baty, the plant superintendent.

52. This dual relationship of Rose Todd as a supervisory employee and as president of the Donnelly Garment Workers Union, undoubtedly accounts for the fact that she has a desk on the seventh floor where she keeps the Donnelly Garment Workers Union records. Rose Todd as a representative of the Donnelly Garment Workers Union, transacted union business at her desk during working hours and the employees knew this because of Rose Todd's announcement to them that they could come to her desk and sign membership cards in the Donnelly Garment Workers Union, and this was particularly true for several days after April 27, 1937.

[fol. 662]. 53. Rose Todd's position with the respondent enabled her to use the inter-office mail service and the inter-office memorandum forms in notifying the employees of any matters in connection with the Donnelly Garment Workers Union, and as has been previously stated, gave her the use of the interdepartmental phone system of the respondent.

54. Hobart Atherton stated that he, with Rose Todd were responsible for the meeting of April 27, the employment of the attorneys, and for the organization of the Donnelly Garment Workers Union, while he and the respondent deny the fact that he is a supervisory employee. Hobart Atherton performs the duties of a supervisor in the mechanical department and was first employed by the respondent in November 1933 in the maintenance depart-

ment. According to his testimony he works on all floors and while he was indefinite about the fact that he received all the phone calls for repairs, there is no question but that that is his function. Atherton transmits the instructions to the employees in the mechanical department and on occasion shows them how to do the work. In addition to Atherton, the department has one electrician, one carpenter, one painter and three laborers. Atherton assigns the work and checks it when completed, and keeps a record of it in a notebook. Atherton denied that he had charge of the mechanical department. The impossibility of the respondent's plant operating with no supervisors is fully discussed below. However, Atherton's explanation of his duties and functions in the department creates an impossible situation. Someone must assume the responsibility for the assignment of work to the three different types of mechanical people employed, and certainly with the three laborers who are employed, it cannot be assumed that they or the mechanics decide what is to be done and go about their business. There is no testimony to indicate that Mr. Baty, the plant superintendent, in any way directs the work of these employees.

[fol. 663] 55. Mrs. Nichols who is in charge of the price-setting section, is supervisory employee although a member of the Donnelly Garment Workers Union. Ted Scoles is a member of the Donnelly Garment Workers Union and is in charge of the cutting section. All of the salesmen are members of the Donnelly Garment Workers Union.

56. Miss Pauline Hartman, who is treasurer of the Donnelly Loyalty League, is employed in the office and works on the time pay rolls. It is questionable whether Miss Hartman is in a supervisory capacity, but she is employed in a confidential position as she has access to the safe and vaults of the respondent where at times she keeps the funds of the Donnelly Loyalty League. There was some testimony to indicate that she has one or two persons under her supervision, and due to her seniority she does take a certain amount of responsibility for the work in her section. She is employed in a very confidential relationship with the respondent in the main office.

57. Jack McConaughy, the present treasurer of the Donnelly Garment Workers Union, is employed in the re-

spondent's main office on the tenth floor. Mr. McConaughy has been employed by the respondent for 9 years. At present Mr. McConaughy is employed on a salary basis and has the responsibility of the pay rolls, social security records, and so forth. Prior to his present position he was in charge of the service section or mechanical section.

58. Marvin Price is a supervisory employee being employed as the custodian of the plant. Mr. Milton Slotkin, manager of the Kansas City Chair Company, testified that he always consulted with Mr. Price concerning the rental of chairs and had received orders for the rental of chairs to be used by the company on several occasions. When Rose Todd as president of the Donnelly Garment Workers Union in April 1938 reported the number of meetings that had been held in the plant in order that the rental due could be determined, submitted the report to Marvin Price.

[fol. 664] 59. The Donnelly Garment Company employs 40 to 45 so-called instructors. These instructors are supervisory employees and have charge of the different sewing sections composed of 1 thread girl or assistant instructor, and about 40 machine operators. All of them are eligible for membership in the Donnelly Garment Workers Union and as far as the record discloses, all are members. These instructors have not been particularly active in the Donnelly Garment Workers Union. It is unnecessary that they should be because when the operators know that the instructors are members and attended the meetings regularly, it is sufficient indication to the girls working under their supervision that it is advisable for them to, also, belong to the Donnelly Garment Workers Union.

60. Mrs. Reeves, formerly plant manager, testified that "competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same." As hereinbefore referred to, the instructors were left off the Loyalty petition until their signatures were requested by Mrs. Reed. In a meeting of the group chairman, as shown by the minutes of June 15, 1937, Hobart Atherton stated: "I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote." This would indicate that even in the



minds of the officers of the Donnelly Garment Workers Union, there was some doubt about the advisability of permitting the instructors full membership in the Union and the curtailment of their membership rights can only be based upon the fact that they, the instructors, were in a somewhat different position than the ordinary plant employees. May Fike testified "that instructors give orders to the girls and tell them what to do" and that the instructors have a table in the section to themselves; further, that when the work is incorrectly done, the instructor tells the girls how it should be done; further, that the instructors have the responsibility to turn the power off and on in the various sections.

[fol. 665] 61. The instructors' supervisory authority is further shown by the fact that when the work is slack the instructors decide who shall take a day off and in what order the operators will take off their time. The instructors, according to the testimony of the respondent's and intervenor's witnesses, are in fact supervisors in every sense of the word. Marjorie Green, secretary of the Donnelly Garment Workers Union, testified that on one occasion a complaint had been made to the Union because an instructor was unreasonable. Mable Riggs testified to the same effect. Rose Todd testified that grievances were taken up with Mr. Baty and the instructor and adjusted. This would clearly indicate that the instructor is a supervisory employee to be considered in the discussion and settlement of grievances with the operators. Instructors are paid twice a month and their names are carried on the time workers pay roll, while the operators are paid on a piece rate basis weekly.

62. Pearl Collins, an instructor, testified: "I work up and down the whole section and distribute work. I try to keep the girls busy." "I distribute work up and down the section. I try to keep the girls busy but I am not in charge of anything. I am just here." Pearl Atchison, an employee of the respondent who worked as an operator for 8 years, stated that she had been promoted to an instructor and that she was promoted she supposed because she was capable. Effie Wiegand, an operator, testified that Mr. Baty had never spoken to her about employment and had never given her any instructions or directions.



63. The respondent has a section that employees 25 or 30 examiners and inspectors whose duty it is to inspect the finished garments when they come from the different sewing sections. The examiners or inspectors are not supervisory employees in the same sense that the instructors are, but they do, although the respondent in general denies the fact, report at least to the instructors by referring back defective garments on the work of the various operators. Mr. Baty testified that the examiners had reported to him concerning the work of May Fike, but it was impossible for him to recall the examiner who reported the fact.

[fol. 666] 64. The evidence is undisputed that prior to June 1935, Mrs. Reeves who was then the production manager, considered the instructors as supervisory employees with a very definite responsibility. She testified:

After we decide that we have to lay off a certain group or a number of people we go over our records with the instructor and she makes the recommendation because she is in close touch with the operator and knows the type of work the operator does and whether she is efficient, obedient, cooperative and reliable . . .

65. In June 1935, Mr. Baty became production manager and according to his testimony, changes were made in the functions of instructors. Baty testified:

I changed the work of the instructors, I would say, to a very great extent. Prior to the time I took them, they were considered more or less supervisors, and entered into the discussions and recommendations as to the ability of different operators and made different recommendations as to which operators would be recalled after they were laid off, and after I took over the plant, I put instructors strictly on the basis of an instructor, and they were there to assist the operator in the performance of their work and nothing else. They had no supervision over the girls, and it was none of their concern as to how the girls performed. They were to give them the work, take it away from them when it was finished, show them how to do it, if they didn't know how, and that was the extent that they were held liable for the girls in the section.

Under the changes made by Baty, he testified the instructors had no authority to hire, discharge, discipline or supervise operators; Baty retained all such authority over all employees in his department. On June 2, 1939, the number of employees included in Baty's department were as follows: 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 in the cutting department, 15 dividers, 44 instructors and distributors, 14 mechanics and helpers, 11 bundle boys, 52 clerical workers, 60 miscellaneous time workers, 20 porters and maids. These employees are located on 10 floors of the building occupied by the respondent's plant. Baty testified:

[fol. 667] Q. Mr. Baty, supposing when you start up tomorrow morning, if you were there, that say there are ten of these sections and a couple of girls didn't show up, how do you find that out?

A. We have a hospital department and the nurse maintains an attendance record. She calls each section in the morning and asks the floor girl or the instructor, whoever answers the phone, for her attendance, who is absent, and any cards that are not stamped in at the time clock, at the time for that group to report to work, are picked up and taken to the nurse's office. In a very few minutes after time to start to work, within fifteen minutes, it is known how many are absent.

Q. Who notified you? A. They don't notify me.

Q. How do you know? A. I go around and look.

Q. You mean, you check every section the first thing in the morning?

A. I go over the plant the first thing in the morning.

Q. How many sections do you have?

A. Well, there is sixteen, eighteen.

Q. Who do you inquire of in each section? How do you find out there is somebody missing?

A. All you do is look at the vacant chairs. You don't inquire of anybody.

Q. Do you know, then, who is gone?

A. I don't know the exact persons in all cases. I know that there are so many operators out of this section and so many out of the other one, and so on.

Baty further testified:

Q. You are the only one there, either book or pamphlet or human being or any other way that knows what these many hundreds of operators are doing?

A. No. Many other people there know what they are doing.

Q. Well, but it isn't anyone else's duty to know what they are doing except yours, is it?

A. Not necessarily.

[fol. 668] A. The instructors are paid to know what they are doing.

Q. What do they do with the knowledge they gain about what the operators are doing?

A. They continue to use it to provide them with similar work.

Q. When you ask them if a girl is inefficient and ought to be let out, they tell you, don't they?

A. I don't ask them anything of that kind.

Q. That is what we have been talking about, Mr. Witness. I asked you if any of the instructors ever say to you, either upon your request or otherwise, that such-and-such an operator is inefficient and cannot longer be continued in the employment?

A. They have no such duty to perform. It is not up to them to say whether they are efficient.

Q. Do you ever ask one of them that?

A. No.

Q. You just know all that yourself?

A. I can tell from their payroll record, and my own observation of the operator, and I talk to the operators myself.

Q. Now, can you give me any good reason why you wouldn't permit an operator—I mean an instructor—to discipline the operator?

A. I can give you a very fine reason, and the reason.

Q. All right, let's hear it.

A. Because the instructors are not capable of disciplining operators.

Q. I see. You have instructors that have been there for 15, 16 years, haven't you? A. We have.

Q. And you never ran a machine in your life, did you?

A. I did.

Q. Where?

A. A few minutes down at the plant.

[fol. 669] Q. Now, let's say that some operator is staying away from her machine, staying in the toilet a little too often, too much. How do you find that out? Do you get that on these inspection tours you make of the factory, or does some one tell you about it?

A. The operator would tell me herself.

Q. Oh, I see? A. Yes.

Q. So, if some operator is sneaking off to the toilet and taking the time of the company, why, she will come and tell you about it; is that it? A. Yes, sir.

Q. You wouldn't think of asking the instructor?

A. It wouldn't be necessary.

Q. The 600 or more operators, you wouldn't ask the instructor whether this little girl is behaving or not?

A. I would not.

66. Mrs. Reeves, formerly in charge of production, and now familiar with the respondent's operations, testified as follows:

Q. Now, you made an affidavit in the three-judge hearing, didn't you? A. Yes.

Q. And that affidavit, according to the record, was made and sworn to on the 30th day of October, 1937. If that is the record, that is correct, I assume. You remember that that three-judge hearing was going on in October, 1937? A. Well, if that is the date there.

Q. In that affidavit you stated (reading) "Competent instructors teach the operators the particular operations to be performed by them, and constantly supervise the same."

A. All right.

Q. Well, you said that, didn't you, swore to it?

A. If it is said there, yes, and it is true.

Q. They constantly supervised them, at least, by October 31, 1937? A. That is right.

[fol. 670] 67. Reeves further testified: "The authority that an instructor has from the company is to keep the operators in plenty of work and to follow the outline that is sent down to her from the office, as far as planning, and if it is impossible for her to do that, for some reason, she consults with Mr. Baty and he attends to all of the affairs as to personnel, transferring operators, and hiring and firing, and Mrs. Hyde assists him, under his instructions."

68. The change in June 1935 was hardly in accordance with Mrs. Reed's testimony of May 25, 1935 when she stated: "Now, in our plant I think that we have more supervision and more executives than—I know. I have more than are usual in a plant of this kind . . . Yes, our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge."

69. May Fike, a witness for the Board, testified that when Mr. Baty took charge in June 1935, that thereafter there was no change in the conduct of the instructors or their relationship to the operators. As far as the record discloses, the operators were never advised in June 1935 that there had been a change in the method of supervision, and consequently, the operators knew nothing of the taking away from the instructors any authority which they had previously had. Whether the instructors continued in the same manner as far as the operators were concerned, they looked upon the instructors in the same way that they had during the regime of Mrs. Reeves as plant manager, so that the effect of the instructors in joining the Donnelly Loyalty League and the Donnelly Garment Workers Union would remain the same.



70. The relationship of the respondent to the Donnelly Garment Workers Union is not only clearly shown by these outstanding facts, but it is further proven by a number of rather, in themselves, small incidents.

71. Rose Todd testified that notices of meetings were made by memos to all departments sent through the respondent's messenger service and by placement on bulletin boards. She further testified that she just addressed the memos to each department and that they must have been passed through the instructors' hands to the various employees in the sections. On a few occasions, mail received for the Donnelly Garment Workers Union was received in the company mail and received by the mail clerk and stamped with the receiving stamp of the respondent. The Kansas City Chair Company, in keeping its account of chairs rented to the Donnelly plant, was unable to distinguish between the rentals made to the company, the Donnelly Loyalty League and the Donnelly Garment Workers Union. The accounts were all kept under one ledger name—Donnelly Garment Company, until January 1939 when separate accounts were opened.

72. The Donnelly Garment Workers Union had no office or meeting place except in the respondent's plant. The Independent used the respondent's equipment and supplies, such as typewriters, desks, ditto machine, files, safe and bulletin boards.

73. Again, the inseparability of the respondent from the Donnelly Garment Workers Union was conclusive to its employees. This inseparability is clearly set forth in the actions of the supervisory employees referred to herein; the leadership of these supervisory employees in the Donnelly Loyalty League, as well as the Donnelly Garment Workers Union; the use of the respondent's building, equipment and supplies, and the undersigned so finds. The Donnelly Garment Workers Union could perhaps successfully function as a company-dominated organization without a closed-shop contract. Although Mrs. Reed stated to the employees at the meeting of March 18, 1937 that she would not permit anyone to force her employees to join a union, when the agreement of May 27, 1937 was

entered into, there was embodied therein a closed-shop provision which met with the instant approval of Mrs. Reed and Rose Todd.

(3) Donnelly Garment Workers Union contracts with the respondent.

74. While Rose Todd's testimony concerning the meeting with Mrs. Reed on April 28, 1937 is indefinite and contradictory, the statements of Mrs. Reed were such that Todd was assured of recognition for the Donnelly Garment Workers Union. Miss Todd advised Mrs. Reed that the Independent was the representative of her employees and that they desired an agreement with the company. Mrs. Reed advised that an agreement, when properly prepared, would be considered. The evidence with regard to recognition, and particularly whether or not a check was made of the cards, is rather indefinite and conflicting. One witness for the respondent testified that no such check and count was made, while another testified and also Mr. Baty, the plant superintendent, that the cards were carefully checked. Certainly, if Mrs. Reed recognized the Independent on April 28, there could have been no careful check made of 1300 signatures and cards, and Mr. Baty's statement is entitled to no weight.

75. On May 27, 1937, Mrs. Reed was presented with a contract by the officers and representatives of the Independent. There were several other officials of the company present at this meeting on the morning of May 27. Paragraph 9 of the agreement reads as follows:

Closed Shop. The employer agrees that on and after June 5, 1937, no one of its employees shall be retained in its employ who is not a member of this union.

It is well to recall that on March 18, 1937, at a meeting of the Donnelly Loyalty League, Mrs. Reed, president of the respondent, spoke to the employee stating that no one could force her to force her employees to join a union. On April 23, 1937, Rose Todd stated to Fern Sigler: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always." However, by May 11, 1937, at a meeting of the Donnelly Garment Workers Union, Rose Todd ad-

vised the members that "anybody coming to work for us will join the union immediately. If there is any doubt in their minds about whether or not they want to join our union, then there is some doubt in their minds as to whether or not they want to work here."

76. At a meeting on May 6, 1937, of the officers and representatives of the Independent, Mrs. Reed was in attendance. It was at this meeting that Rose Todd advised Mrs. Reed: "We are working on a working [fol. 673] agreement to submit to you for your consideration concerning hours, wages and working conditions (which up to now had been very satisfactory). There is one thing we want to ask you to consider when we submit this plan to you—and that is, we would like to have a closed shop. (Mrs. Reed: 'I understand that is very essential to industrial peace.')" Reed's and Todd's sudden reversal — in their viewpoint on the closed shop — can only be explained by the conclusion that having organized and dominated the Independent the respondent intended to insure its future control of this organization. With a closed shop agreement and the requirement in the Independent bylaws that its members could not join any other labor organization, the purpose of the Independent—"the protection of employees and members of this union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employees in this plant . . ."—as expressed in its bylaws would be an accomplished fact, that is the exclusion of all outside unions.

77. On the morning of May 27, according to the minutes of the meeting between the officers and representatives of the Independent, and Mrs. Reed and her assistant, Mrs. Reed said: "I would like to have a little time to look over this agreement. However, I think it is very much in line—there will possibly be one or two little changes." Mrs. Reed further said: "I think the only changes it will be necessary to make will just be legal phraseology. The spirit of this agreement is satisfactory." Rose Todd also stated that the contract was acceptable to the respondent as submitted except for certain minor changes which she was unable to point out.

78. The morning meeting adjourned at approximately 11 a. m., and in the afternoon at about 2:30 or 3:00 o'clock, after Mr. Ingraham, the company attorney, Mrs. Reed and other officials of the company, had considered the agreement, the contract was accepted practically as presented. Mr. Tyler, the attorney for the Independent, explained the contract in this manner to the officers and representatives [fol. 674] of the Independent: "There is no very important change between this document and the one we prepared ourselves a little while ago . . . In this agreement we find it necessary in defining employees not to include executives . . . Also we have added to this agreement that to become a member of this committee you must be employed here for at least one year. This is to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company."

79. Mr. Baty's testimony with respect to the agreement under discussion at the meeting of May 27, 1937, is in conflict with the weight of the testimony and should be given no weight. In fact, his entire testimony is at variance with the facts as established by the record, almost to the point of being entirely incredible.

80. On June 22, 1937, the Independent entered into a supplemental agreement with the Donnelly Garment Company and the Donnelly Garment Sales Company. The supplemental agreement covered primarily wages and hours, and classification of the operators and other employees involving a minimum wage. There was a great deal of testimony with respect to the provisions of the supplemental agreement as to whether it was beneficial to the employees and whether they had gained anything by the execution of the supplemental agreement. It is not necessary to discuss in this report any of the matters embodied in the supplemental agreement as the original contract of May 27, 1937 established as a requirement of employment that the employees of the respondent join the Donnelly Garment Workers Union, thus requiring them to join an organization which was and is sponsored, dominated and supported by the respondent.



81. A contract entered into under these conditions is void and no force or effect, and the undersigned so finds.

82. In the fall of 1937 the respondent and Rose Todd—without any authority from the members or group chairmen—agreed upon a method for the collection of membership dues by means of a check-off. The membership dues of 25 cents per month were paid directly to the Independent during the months of May, June and July 1937. On November 3, 1937, the respondent by its check paid into the organization \$735.75. This amount represented the dues deducted from employees' checks for the months of August, September and October. Since this time the respondent has monthly paid to the Donnelly Garment Workers Union the dues deducted. Rose Todd, the Independent's president, and Jack McConaughy, its treasurer, were unable to satisfactorily explain any plan that would enable the Independent to check the amount received. The respondent, in forwarding the check does not provide the organization with the names of those employees for which the deductions were made. The Independent does not have a record of the dues paid by its members and issues no receipts for dues. The employees' checks indicate deductions made for dues, Social Security tax, etc.

### C. Termination of employment of Sylvia Hull and May Fike.

83. Sylvia Hull, an operator, was employed by the Donnelly Garment Company for 8 years with one interruption of work of 7 months in 1933. She was employed originally in the spring of 1929 and her employment was terminated April 23, 1937, at which time she was a member of the International Ladies' Garment Workers' Union. The details of the incidents which occurred on April 23, 1937 when Hull left the plant of the Donnelly Garment Company, has been fully covered in Section 3-A herein.

84. On April 22, 1937, a notice appeared in one of the Kansas City papers that Sylvia Hull had been selected to represent the Donnelly Garment Company employees at the International Convention of the Union in Atlantic City, and the next morning when Sylvia Hull appeared for



work she was advised by a girl whose name she could not recall, not to change her clothes and to go to work. As [fol. 676] related in the section hereinbefore referred to, just after the power was turned on, a group of girls came over to her machine and started talking about the Union. Mrs. Allison and Rose Hendricks, instructor and assistant instructor in charge of the section, were present during the entire time of the demonstration.

85. When Sylvia Hull left the plant of the Donnelly Garment Company on April [27], 1937, she left with Mrs. Hyde the telephone number of a neighbor. The testimony is uncontradicted that on April 24, 1937, Mrs. Hyde called the number that was left by Hull and was unable to reach Hull, and further, that on at least one or two other occasions, an effort was made by Mrs. Hyde to reach Hull. No effort was made by the employment department of the respondent to reach Hull by mail or by telegram.

86. The testimony is uncontradicted that Sylvia Hull, after she left the plant on April 23, never thereafter called the plant or applied for reinstatement. Hull testified in the Judge Miller injunction case that she desired to return to her former job at the Donnelly Garment Company under certain conditions. She stated that she would return under union conditions, however, qualifying this statement stating: "I don't know their conditions now."

87. The undersigned finds that Sylvia Hull was not discharged because of her membership or activities in behalf of the Union, but that she was excluded by the respondent from the [the] plant for that reason.

88. This exclusion of Hull from the plant is an unfair labor practice and the normal procedure would be to recommend her reinstatement. In this instance because of events occurring subsequently to April 23, 1937, such a recommendation is unwarranted. When Hull left the plant on April 23, 1937, she gave to Mrs. Hyde the telephone number of a neighbor. On April 24 and on at least one other occasion, the testimony is undisputed that Hyde called the number and although talking to someone was unable to contact Hull. In the Judge Miller Injunction proceedings heard in Kansas City, Missouri in the spring

of 1939, Hull testified she wanted her job back, but would not return except under union conditions.

[fol. 677] 89. May Fike was employed by the Donnelly Garment Company some time in 1927 and was, except for a 2 years' period in 1931-1932, employed continuously until May 1937, when she left at her request on a vacation. May Fike joined the International Ladies' Garment Workers' Union on March 15, 1937. During April 23, 1937, when Fern Sigler was excluded from the plant, it was unknown to the supervisory employees of the respondent that she, May Fike, was a sister to Fern Sigler. May Fike worked in a section on the same floor and after the demonstration against Fern Sigler, Pearl Atchison, her instructor, spoke to her and advised Fike that she would have to go home because the work in that section was slack. The testimony as to the occurrences on the following day is somewhat conflicting, but the fact is that Fike returned to work and worked during that week. At the end of the week, May Fike, who desired to go on vacation with her husband, requested Ella Mae Hyde, the employment manager, that she be given the privilege of taking her vacation at a time other than the period set for all of the girls in the section, it having been the customary practice of the respondent to grant vacations to all the girls operating in the section at the same time. The evidence is clear that May Fike was advised by Mrs. Hyde that if she did take her vacation, that her return to work would depend upon whether there was any work to be done. From this point on the testimony of other witnesses is at variance. It is not necessary in determining the issue with respect to May Fike to consider any of this conflicting testimony.

90. After May Fike returned from her vacation, she, on several occasions, got in touch with Mrs. Hyde and on each occasion was advised to call again and that if there was work available she would be requested to report.

91. The undersigned finds that May Fike was not discharged for union or concerted activities or her membership in the Union, and further recommends that the complaint as to May Fike be dismissed.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce.

92. The undersigned finds that the activities of the [fol. 678] respondent in interstate commerce, as set forth in Section III herein, occurring in connection with the operations of the respondent described in Section I herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. By dominating and interfering with the formation and administration of the Donnelly Garment Workers Union, and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

2. By discriminating in regard to the tenure of employment of Sylvia Hull and thereby discouraging membership in the International Ladies' Garment Workers Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

Wherefore, the undersigned recommends that the respondent, and its officers, agents, successors and assigns:

1. Cease and desist from in any manner:

(a) Dominating or interfering with the formation or administration of the Donnelly Garment Workers Union or of any other labor organization of its employees, and

contributing support thereto or to any other labor organization;

(b) Discouraging membership in the International Ladies' Garment Workers' Union, or any other labor [fol. 679] organization of its employees, by discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(c) Recognizing the Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(e) Giving effect to its contract with the Donnelly Garment Workers Union or to any modification, continuation, supplement, extension or renewal thereof;

(f) Giving effect to any agreement for the deduction or collection of dues from the wages of its employees on behalf of the Donnelly Garment Workers Union;

(g) Interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. In order to effectuate the policies of the Act, respondent takes the following affirmative action:

(a) Withdraw all recognition from the Donnelly Garment Workers Union as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and completely disestablish all relations with the Donnelly Garment Workers Union as such representative;

(b) Notify all its employees by individual letters sent through the United States mails; that they are free to join or assist any labor organization for the purpose of collective bargaining with the respondent;

(c) Immediately post notices in conspicuous places throughout all the respondent's departments and sections, [fol. 680] stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purpose of collective bargaining; (3) that the respondent has withdrawn all recognition from the Donnelly Garment Workers Union and has disestablished all relations including contractual, with said Donnelly Garment Workers Union (4) that the respondent's contract of May 27, 1937, with the Donnelly Garment Workers Union, or any modification, continuation, supplement, extension, or renewal thereof is void and of no effect; and (5) that such notices will remain posted for a period of at least sixty (60) consecutive days from the date of posting; and

(d) File with the Regional Director for the Seventeenth Region within twenty (20) days from the service of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

It is further recommended that unless within twenty (20) days from the service of this Intermediate Report the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring the respondent to take the action aforesaid.

Request for permission to file briefs with or present oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on other issues upon which it is desired to file a brief or present oral argument, must be made to the Board, Shoreham Building, Washington, D. C., within twenty (20) days after the date of the order transferring the case to the board, as provided in Article II, Section 32 of the Rules and Regulations, Series 2, effective July 14, 1939.

Dated: Oct. 7, 1939.

JAMES C. BATTEN,  
Trial Examiner.



[fol. 681] (Decision and Order of National Labor Relations Board, March 6, 1940.)

United States of America.

Before the National Labor Relations Board.

In the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, Party to the Contract.

Case No. C-1382.—Decided March 6, 1940.

*Ladies' Garment Manufacturing Industry—Interference, Restraint, and Coercion:* domination and use of employees' Loyalty League to prevent organization of employees by "outside" labor organization; permitting employees to circulate anti-union loyalty pledge with assistance of supervisors and requesting that additional signatures be obtained; sponsoring and dominating anti-union meeting of employees and encouraging opposition to "outside" labor organization by promising "protection" to employees; speech disparaging union leader; approval and encouragement of anti-union demonstrations by employees in plant—*Company-Dominated Union:* domination of and interference with formation and administration; formation sponsored and financed by company-dominated League; participation by supervisors and by confidential employees who were held out as representatives of management; use of company property and facilities; union business conducted on company time and property; union committee controlled by management representatives; encouragement of inside union by speedy recognition, prompt negotiation of closed shop contract; ordered disestablished—*Evidence:* testimony of employees that they were not dominated or coerced but acted voluntarily is not controlling when record shows respondent committed acts of domination, interference and assistance—*Contracts:* with company-dominated union invalid; substantive provisions of relating to rates of pay, wages, hours of employment, or other conditions of employment, not to be affected by—*Check-Off:* agreement for, with company-dominated union; employer ordered to reimburse employees for amounts deducted from wages as dues for company-dominated union

—*Discrimination*: entering into and publicizing closed-shop agreement with company-dominated union, thus not within proviso of Section 8 (3), held discrimination as to terms and conditions of employment; temporary lay-off held discriminatory, but no order of reinstatement or back pay because employer subsequently took action equivalent to offer of reinstatement; denial of reinstatement after vacation discriminatory—*Reinstatement Ordered*: for discriminatory refusal to reinstate—*Back Pay*: awarded to employee who is to be offered reinstatement; computation of: period from date of service of Intermediate Report to Order excluded from.

*Mr. Daniel J. Leary and Mr. Henry H. Foster, Jr., for the Board.*

*Reed & Ingraham, by Mr. James A. Reed, Mr. R. J. Ingraham, Mr. James J. Shepard, Jr., and Mr. Burr S. Stottle, of Kansas City, Mo., for the respondent.*

*Mr. Clif Langsdale and Miss Jane Walker Palmer, of Kansas City, Mo., for the I. L. G. W. U.*

[fol. 682] *Gossett, Ellis, Dietrich & Tyler, by Mr. Frank E. Tyler, Mr. Thomas J. Patten, and Mr. Lucian Lane, of Kansas City, Mo., for the D. G. W. U.*

*Mr. N. Barr Miller, of counsel to the Board.*

#### Decision and Order.

#### Statement of the Case.

Upon charges dated August 9, 1938, and amended charges dated April 6, 1939, duly filed by International Ladies' Garment Workers' Union, herein called the I. L. G. W. U., the National Labor Relations Board, herein called the Board, through its Acting Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint, dated April 27, 1939, against Donnelly Garment Company, of Kansas City, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint, as amended,<sup>1</sup> alleged in substance (1) that the respondent on or about April 27, 1937, and thereafter, dominated and interfered with the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," herein called the D. G. W. U., and has given financial and other support to the said organization, *inter alia*, (a) by encouraging and permitting its supervisory and other employees to promote the organization of and membership in the D. G. W. U. on the respondent's time, property, and at its expense, (b) by forming, on or about February 12, 1935, through its officers and agents, the Donnelly Loyalty League, herein called the League, and continuing to dominate said League until on or about April 27, 1937, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and (c) by entering into a closed-shop agreement for the purpose of assisting the D. G. W. U. and of depriving its employees of their rights guaranteed under the Act; (2) that the respondent discouraged membership in the I. L. G. W. U. by discharging 2 employees, Sylvia Hull and May Fike, in April 1937, because said employees had joined and assisted the I. L. G. W. U.; (3) that the respondent by various acts<sup>2</sup> has coerced and restrained its employees from becoming members or continuing membership in the I. L. G. W. U. and has encouraged and compelled membership in the D.

<sup>1</sup>The allegations are summarized from the complaint as amended at the close of the evidence put in by the Board at the hearing. By stipulation, dated July 22, 1939, the amended complaint was further amended to conform it to the proof.

<sup>2</sup>The principal acts enumerated in the amended complaint are: (a) by discharging Fern Sigler in April 1937, (b) by statements of the respondent's president and of certain supervisory employees in March and April 1937, (c) by public statements against the I. L. G. W. U. made by James E. Reed, (d) by permitting a loud-speaker system in its cafeteria to be used as a medium of propaganda in favor of the D. G. W. U. and in opposition to the I. L. G. W. U., (e) by keeping members and meetings of the I. L. G. W. U. under surveillance, (f) by circulating and inducing its employees to sign a petition professing their loyalty to the respondent, (g) by permitting certain supervisory and confidential employees to become members and active in the affairs of the D. G. W. U., (h) by discriminating in the allotment of work and by refusing to recall to work certain named employees who were allegedly members of the I. L. G. W. U., (i) by instigating and permitting its employees to engage in a demonstration on April 23, 1937, against certain members of the I. L. G. W. U., and (j) by granting a contract to the D. G. W. U. making membership therein a condition of employment.

G. W. U. It is further alleged that the respondent by entering into a closed-shop contract with the D. G. W. U. has violated Sections 8 (3) and 8 (1) of the Act and that the aforesaid closed-shop contract between the respondent and the D. G. W. U. is void and of no effect.

Upon motions of the respondent and the D. G. W. U. the Trial Examiner dismissed the allegations in the amended complaint relating to certain of the acts of interference, restraint, and coercion,<sup>3</sup> but overruled all motions of the respondent and the D. G. W. U. to dismiss the complaint or amended complaint in its entirety.<sup>4</sup> These rulings are hereby affirmed.

The complaint and notices of hearing thereon were duly served upon the respondent, upon the I. L. G. W. U., and upon the D. G. W. U., party to the contract. On May 2, 1939, the Donnelly Garment Workers Union filed its petition to intervene, which was granted, by order of the Acting Regional Director for the Seventeenth Region, in so far as its interests might appear.

Hearings were held before James C. Batten, the Trial Examiner duly designated by the Board, from June 5 to July 15, 1939, inclusive, at Kansas City, Missouri. At the hearing the Board, the respondent, the D. G. W. U. and the I. L. G. W. U. were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

[fol. 684] The respondent and the D. G. W. U. filed motions to make the charge and the complaint more definite and certain. The Trial Examiner granted in part the motions referring to the complaint, and ordered counsel for

<sup>3</sup>The portions of the amended complaint dismissed were subparagraphs d, g, g(1), i, k, n, o, and p, of paragraph 11, relating to: (1) public statements of James A. Reed, (2) statements of Alex Green and Mrs. Ella Mae Hyde, supervisory officials of the respondent, concerning the I. L. G. W. U., (3) use of a loud-speaker system in the respondent's cafeteria to influence its employees regarding their union affiliations, (4) surveillance, (5) discrimination in the allotment of work to employees who were members of the I. L. G. W. U., and (6) the refusal of the respondent to recall or assign work to certain named employees who were members of the I. L. G. W. U.

<sup>4</sup>These motions were made at various times during the course of the hearing. The Trial Examiner reserved decision and announced the rulings, as stated, in his Intermediate Report.



the Board to make the complaint more definite and certain in specified respects. Counsel for the Board, in compliance with the Trial Examiner's ruling, thereafter moved to strike certain portions of the complaint and to amend it, which motion was granted. At the close of the presentation of evidence by the Board in support of the complaint, said complaint was again amended on motion of counsel for the Board, and service of said amended complaint was acknowledged by the parties. Various other motions by the respondent and the I. L. G. W. U. to make the complaint more definite and certain were denied and the respondent's contention that portions of the amended complaint were so vague, indefinite, and uncertain that they do not sufficiently apprise the respondent of the acts charged was overruled by the Trial Examiner. These rulings of the Trial Examiner are hereby affirmed.

On June 1, 1939, the respondent filed its answer which was divided into four parts. In Part A the respondent contended that upon ten stated grounds<sup>\*</sup> the Board is without jurisdiction to maintain the proceedings. In Part B, of its answer the respondent avers that the complaint must be dismissed "for the reason that the Board, its agents and representatives, have exceeded their authority

<sup>\*</sup>The stated grounds were: (1) the Board is without jurisdiction to issue a complaint "at the request of an organization which does not represent a single employee in the respondent's plant," \* \* \* and (which) has been found by a United States Federal Court to be engaged in an unlawful conspiracy to force respondent to compel its employees to join said organization against their wills"; (2) the Board has no authority to issue a complaint "for the purpose of attempting to abrogate and nullify contracts between the respondent and the exclusive representative of 100 per cent of its employees when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union (I. L. G. W. U.), and other garment manufacturers in this part of the country"; (3) this proceeding deprives the respondent, without a judicial hearing, of its right freely to contract as guaranteed by the Fifth Amendment to the Constitution of the United States; (4) if this proceeding were sustained valid contracts between the respondent and the chosen representatives of its employees would be abrogated without a judicial hearing, due process of law, and a trial by jury, in violation of the Fifth and Seventh Amendments to the Constitution; (5) this proceeding deprives the respondent of its property without due process of law and of its right to trial by jury by providing for the awarding of increased wages to former employees and for their reinstatement; (6) the amended charge of the I. L. G. W. U. is vague, indefinite and does not state facts sufficient to support a formal complaint; (7) the Board, without authority, by the issuance of its complaint, has prejudged as true the allegations in the amended charge of the I. L. G. W. U.; (8) the complaint is vague, indefinite, insufficient and alleges conclusions instead of facts,



[fol. 685] and have demonstrated their bias and prejudice against the respondent, and collusion with the International Union (I. L. G. W. U.) by filing of the complaint herein and by the maintenance of this proceeding in the face of [certain enumerated] facts of which the Board and its representatives have actual knowledge." \* Part C of the respondent's answer is a petition for investigation and certification of representatives of its employees. The answer, in Part D, admits certain allegations in the complaint concerning the corporate structure and the nature of the business of the respondent, but denies specifically each and every allegation that it has engaged in or is engaging in unfair labor practices.

all in violation of due process of law; (9) the maintenance of this proceeding violates the Fifth Amendment and Article III, Sections 1 and 2 of the Constitution of the United States by permitting the Board to act as investigator, complainant, prosecutor, trier of the facts and judge of the controversy and by denying the respondent a judicial review of the evidence in accordance with the rules of law and evidence; (10) the Board has not conducted an election among the respondent's employees to determine their choice of representatives, which is a condition precedent to a proceeding based on charges of unfair labor practices.

"The answer of the respondent alleges as facts of which the Board has knowledge: (1) that the I. L. G. W. U. has engaged in an unlawful conspiracy to injure and destroy the respondent's business by publishing false and libelous reports about the respondent and the working conditions in its plant, by inaugurating and threatening to inaugurate secondary boycotts against the respondent's customers and merchandise, by threatening assaults on the respondent's employees similar to those perpetrated against employees of garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Dallas, Texas, and Memphis, Tennessee; (2) that the I. L. G. W. U., knowing that the employees had refused to be represented by the I. L. G. W. U., publicly announced a drive against the respondent and its employees, requested by letter containing false statements a conference with the respondent for the purpose of making a closed-shop contract, and began attacks of fraud and violence against three other garment manufacturing companies in Kansas City, Missouri, at the same time announcing that similar acts of violence would be perpetrated against the respondent's employees; (3) that the respondent after receiving a request to enter into a collective bargaining agreement with the D. G. W. U., a voluntary organization of its employees, sought to obtain a determination by the Board of the right of the D. G. W. U. to be the exclusive bargaining agent of its employees, but was advised by representatives of the Board, that an application by an employer for certification of representatives could not be granted under the rules of the Board, and thereafter entered into a collective bargaining agreement with the D. G. W. U.; (4) that sometime after July 5, 1937, the United States District Court for the Western Division, of the Western District of Missouri, three judges sitting, temporarily enjoined the I. L. G. W. U. from committing unlawful acts of fraud and violence against the respondent and its employees which decision was appealed to the Supreme Court of the United States and by that Court remanded to be heard before a single judge in the District Court; (5) that the Board's Acting Regional Director for the Seventeenth Region (Ernest C. Dunbar) on August 25, 1938, notified the respondent by letter that charges of unfair labor practices had been filed

At the hearing the respondent filed a motion requesting that the complaint be dismissed for the reasons stated in [fol. 686] Part A and B of its answer.<sup>7</sup> At the same time, the I. L. G. W. U. moved to strike certain portions of the respondent's answer, viz., from Part A of the respondent's answer the allegation that a United States District Court had determined that the contracts between the respondent and the D. G. W. U. contain higher wages and more favorable working conditions than contracts between the I. L. G. W. U. and other garment manufacturers in the area; from Part B of the answer the allegations that the I. L. G. W. U. was engaging in an unlawful conspiracy against the respondent, that it had engaged in violence against employees of other garment manufacturers and had announced that similar acts would be perpetrated against employees of the respondent, that the respondent's contract provided for higher wages and more favorable working conditions than contracts obtained by the efforts of the I. L. G. W. U.; the allegations referring to the find-

against the respondent by the I. L. G. W. U. and requested a conference on said charges, and thereafter the respondent requested the said Regional Director for the facts alleged in the charges and for an opportunity to present evidence thereon, but this privilege was denied by the representatives of the Board who threatened to file a complaint and conduct a long hearing unless the respondent acceded to the demands of the I. L. G. W. U. and further asserted that if a hearing were held the Board would find against the respondent; (6) that on or about February 4, 1939, at the request of representatives of the Board, written proposals upon which settlement of the charges might be reached were submitted to each other by the respondent, the D. G. W. U. and the I. E. G. W. U., and that the proposal of the I. L. G. W. U. included an offer to drop all boycott activities against the respondent "so long as the respondent does not recognize any plant union as the bargaining representative of its employees," acceptance of which proposal by the respondent would have compelled it to violate the terms of the National Labor Relations Act; (7) that the hearing on the remanded injunction suit was begun in the United States District Court on March 22, 1939, at the close of which a permanent injunction against the I. L. G. W. U. was granted pursuant to the respondent's petition, and that representatives of the Board were in constant attendance at the said hearing and consulted frequently with representatives of the I. L. G. W. U. during the examination of the respondent's witnesses, thus demonstrating that the Board assisted and is assisting the I. L. G. W. U. in its conspiracy against the respondent and is maintaining the proceedings herein in violation of any authority vested in the Board by the Act.

<sup>7</sup>Part B of the respondent's answer includes the findings of fact and conclusions of law of the United States District Court for the Western Division of the Western District of Missouri in an injunction suit brought by the respondent against the I. L. G. W. U. (See *infra*, note 10.) In its brief and at the oral argument the respondent sets forth as a reason for dismissal of this proceeding the fact that the above-named District Court had found that the respondent's employees acting unanimously had voluntarily formed the D. G. W. U. and at all times freely administered and maintained

ings and decrees of the United States District Court for the Western Division of the Western District of Missouri, the averment that the I. L. G. W. U. admitted that the respondent's employees did not desire to be represented by the I. L. G. W. U., the allegations regarding the assistance of the Board's representatives in the alleged conspiracy of the I. L. G. W. U. against the respondent; from Part D the averments that the I. L. G. W. U. sought closed-shop agreements even when it represented only a few or none of the employees of the company with whom it sought such agreements. The reasons stated as grounds for striking these portions of the answer are that they are immaterial to the issues before the Board; that the Board is not bound by the findings of other judicial tribunals, that the "clean hands" doctrine of equity does not apply to proceedings before the Board, that these portions of the answer constitute an attempt by the respondent to try [fol. 687] before the Board the Federal District Court injunction suit between the respondent and the I. L. G. W. U., and that under the Act the Board is not empowered to take cognizance of alleged law violation, coercion, or intimidation on the part of the complaining union.

The Trial Examiner took these motions under advisement and requested the respondent to submit a written statement of the evidence it would offer to prove the averments set forth in Parts A and B of the answer and any other parts of the answer referred to in the motion to strike. The respondent submitted no statement of evidence in support of Part A of its answer except as to the

it. This finding of fact is not binding upon the Board and does not preclude an independent finding by the Board on this issue. Section 10 (a) of the Act provides:

"The Board is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. [Italics added.]

See *Matter of National Electric Products Corp. and United Electrical and Radio Workers of America, Local No. 609*, 4 N. L. R. B. 475, 500. See also *Union Premier Food Stores, Inc. v. Retail Food Clerks and Managers Union, Local No. 1357 et al.*, 98 F.(2d) 821 (C.C.A. 3), where it was held that the District Court was without authority to conduct an election to determine the exclusive bargaining representative of certain employer since the Act vests power to determine that question exclusively in the Board. Cf. *Blankenship v. Kirby*, 96 F.(2d) 459 (C.C.A. 7); *Int'l. Brotherhood of Teamsters v. Int'l. Union*, 106 F.(2d) 871 (C.C.A. 9).

paragraph relating to the wages and working conditions provided for in contracts entered into between the I. L. G. W. U. and other garment manufacturers. On Part B of the answer the respondent submitted certain parts of the transcripts of testimony taken in an N. R. A. hearing, in which it was also the respondent and the I. L. G. W. U. the charging union, and in the United States District Court injunction suit between the respondent and the I. L. G. W. U. The Trial Examiner refused the proffered evidence, granted the motion of the I. L. G. W. U. to strike, denied the request of the respondent for dismissal of the complaint based on Part A of the answer, and refused to receive the respondent's petition for investigation and certification of representatives as set forth in Part C of its answer. The Board has reviewed these rulings of the Trial Examiner and they are hereby affirmed.

Prior to the commencement of the hearing, the D. G. W. U. filed a motion requesting that the Board conduct an election among the respondent's employees to determine whether they desired to be represented by the D. G. W. U. or by the I. L. G. W. U., and that the hearing be postponed until the outcome of such election had been announced. Thereafter, on May 17 and June 3, 1939, the D. G. W. U. filed a petition and amended petition, respectively for investigation and certification of representatives. The Trial Examiner denied the motion and petitions, which rulings are hereby affirmed. The D. G. W. U. also filed an answer denying all the allegations relating to the unfair labor practices of the respondent, but admitting the existence of a closed-shop agreement between the respondent and the D. G. W. U.

At the hearing the Trial Examiner excluded certain evidence offered by the respondent and the D. G. W. U., in some instances on the ground that it was irrelevant or immaterial and in others that it was cumulative. He permitted the parties to submit written offers of this proof. These rejected offers of proof have been considered by the Board and for reasons hereinafter stated the rulings of the Trial Examiner rejecting said offers are hereby affirmed. By [fol. 688] stipulation the parties placed in evidence, subject to the privilege of making objections thereto on the grounds of relevance, materiality, hearsay character, or



occurrence prior to the passage of the Act, certain portions of the record in a proceeding conducted in 1935 under Section 7 (a) of the National Industrial Recovery Act<sup>8</sup> in which the respondent was similarly charged by the I. L. G. W. U. with interference with the rights of its employees to organize,<sup>9</sup> and of the record in the injunction suit brought by the respondent against the I. L. G. W. U., heard in the United States District Court for the Western Division of the Western District of Missouri before the United States District Judge Andrew Miller.<sup>10</sup> The Trial Examiner permitted these partial transcripts of testimony to be introduced in the record,<sup>11</sup> and overruled all objections directed to the relevancy, materiality, and competency of certain questions and answers contained therein. He ruled, however, that the admission of such evidence was "not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects." After the close of the hearing the respondent and the D. G. W. U. filed motions requesting the Trial Examiner to clarify his ruling, alleging that it was unfair, prejudicial, and denied them due process of law. The Trial Examiner denied these motions. We have examined the evidence contained in these partial transcripts in the light of the Trial Examiner's other rulings on the admission and exclusion of evidence<sup>12</sup> and find no prejudicial error in his denial of these motions. His denial of said motions is hereby affirmed.

<sup>8</sup>48 Stat. 198.

<sup>9</sup>*I. L. G. W. U., Complainant v. Donnelly Garment Company, Respondent*, Case No. 160; N. R. A. Regional Labor Board, Twelfth District.

<sup>10</sup>*Donnelly Garment Company, et al. v. I. L. G. W. U., et al., D. G. W. U. Interveners*, Case No. 2924.

<sup>11</sup>Except as to the offer of the respondent to prove Part B of its answer, which we have already found above to be irrelevant to the issues drawn by the present complaint.

<sup>12</sup>It is manifest that the Trial Examiner's ruling excludes any evidence in these partial transcripts relating, *inter alia*, (1) to contracts between the I. L. G. W. U. and other garment manufacturers, (2) to the claim of the respondent that it pays higher wages and maintains better working conditions than do other garment manufacturers, (3) to strikes and violence allegedly fomented by the I. L. G. W. U. at other garment factories, (4) to the al-



The respondent also filed with the Trial Examiner after the close of the hearing a motion for leave to file and make part of the record a copy of its petition for investigation and certification of the representatives of its employees, which had previously been filed with the Board's Acting Regional Director for the Seventeenth Region and rejected [fol. 689] ed by him. The motion was denied by the Trial Examiner and his ruling is hereby affirmed.

During the course of the hearing, the Trial Examiner made numerous rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the conclusion of the hearing the parties were afforded an opportunity to argue orally before the Trial Examiner and were advised that they might file briefs with him. The parties did not avail themselves of the opportunity to argue orally before the Examiner, but filed memorandum briefs.

On October 11, 1939, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3)<sup>13</sup> and Section 2 (6) and (7) of the Act. He further found that May Fike had not been discriminatorily discharged. He recommended *inter alia*, that the respondent cease and desist from the unfair labor practices which it was found to have engaged in, withdraw all recognition and completely disestablish the Donnelly Garment Workers Union as the representative of its employees for the purposes of collective bargaining, cease and desist from giving effect to its contracts and check-off agreement with said Donnelly Garment Workers Union, and that the allegations of the complaint as to May Fike be dismissed.

leged conspiracy of the I. L. G. W. U. against the respondent, (5) to testimony of the respondent's employees that they were not interfered with, restrained, or coerced by the respondent in their choice of the D. G. W. U. or their rejection of the I. L. G. W. U., and that the D. G. W. U. was formed by the employees because of the strikes and violence occurring at other garment factories which the I. L. G. W. U. was attempting to organize.

<sup>13</sup>He found that the discharge of Sylvia Hull was discriminatory within the meaning of the Act but did not recommend reinstatement or back pay for her for reasons discussed in Section D, *infra*.

On October 12, 1939, the case was transferred from the Regional Office of the Seventeenth Region to the Board in Washington, D. C., and continued before the Board, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 2.

At the request of the parties the time allowed for filing exceptions to the Intermediate Report and to all parts of the record was extended by the Board from November 1 to December 1, 1939, and on that date exceptions were filed by the respondent, the D. G. W. U., and the I. L. G. W. U. Briefs were thereafter filed by the same parties, which have been given due consideration by the Board.

On January 9, 1940, a hearing for the purpose of oral argument was conducted before the Board in Washington, D. C., at which the respondent, the D. G. W. U., and the I. L. G. W. U. appeared.

The Board has considered the exceptions to the Intermediate Report and to all parts of the record and, save [fol. 690] as consistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

#### Findings of Fact.

##### I. The Business of the Respondent.<sup>14</sup>

The Donnelly Garment Company is a Missouri corporation with its principal office and factory located at Kansas City, Missouri. It is engaged in the business of designing, manufacturing, selling, and distributing ladies' garments, under the trade name of "Nelly Don." The respondent, in the course of its business, purchases over 99 per cent of its raw materials—consisting chiefly of cotton, wool acetate, rayon, and linen—in States other than the State of Missouri. In the years 1937 and 1938, the respondent's sales amounted to more than \$4,000,000 per year. Ninety-six per cent of the garments designed, manufactured, and sold were caused by the respondent to be transported and distributed to customers in States other than the State of Missouri.

<sup>14</sup>The findings in this section are based in part on a stipulation of facts signed by all parties.

Officers of the respondent company are: Nell Donnelly (Mrs. James A.) Reed, president and treasurer; Alex C. Green, vice president; R. J. Ingraham, secretary. The principal departments of the respondent and the persons in charge of them are: production, Lee Baty; merchandising, retail store, and receiving, Elizabeth Reeves; office manager, J. B. Bachofer; employment manager, Ella Mae Hyde.<sup>15</sup>

During the peak production periods of the year, the respondent employs more than 1200 persons.

The parties stipulated and agreed that the operations of the respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and that the respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

## II. The Organizations Involved.

International Ladies' Garment Workers' Union is an unaffiliated labor organization maintaining organizational offices in many States. It admits to membership the plant employees of the respondent.

Donnelly Garment Workers Union is an unaffiliated labor organization. According to its bylaws, it admits to membership all employees of the respondent.

## [fol: 691] III. The Unfair Labor Practices.

### A. Events prior to the effective date of the Act

The I. L. G. W. U. made its initial efforts to organize employees of the respondent in 1934 when it established a regional office in Kansas City, Missouri. On March 15, 1934, an open meeting of the I. L. G. W. U. was held in Musicians' Hall in Kansas City to which all employees of the respondent were invited. Few of the operators (i. e., production employees paid at piece-work rates) attended, but a number of the respondent's officials, supervisors, and instructors were present. Soon after, several

<sup>15</sup>For further findings concerning the respondent's supervisory staff see *infra*, Section C 1.

of the respondent's employees, including Glynn Brooks Yarnell,<sup>16</sup> who had been an operator in the respondent's plant since December 1924, made application for membership in the I. L. G. W. U. In June 1934 Mrs. Yarnell held a dinner at her home attended by 12 or 13 of her fellow employees. At this meeting the girls discussed the advisability of joining the I. L. G. W. U. and of forming a local branch. Glynn Brooks Yarnell was discharged in July 1934. Within a few months all except one of the girls who had attended the dinner were either laid off or discharged by the respondent.<sup>17</sup>

On December 6, 1934, the I. L. G. W. U. filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight operators had been laid off because they had joined the I. L. G. W. U. Before proceedings were completed and a decision issued, the National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States.

The record<sup>18</sup> establishes that the respondent, through its supervisory employees, openly and actively resisted the initial organizational activities of the I. L. G. W. U. In 1934 Mrs. Elizabeth Reeves, who was then production manager, had expressed the opposition of the respondent to the I. L. G. W. U. She made a practice of questioning employees concerning their relations with the I. L. G. W. U. She criticized several operators for joining or applying for membership in the I. L. G. W. U. She told various employees that they had been "listening too much to somebody outside," that "Donnelly's don't belong to the union (I. L. G. W. U.) and they never will," that she had thought they "had

<sup>16</sup>The complaint, exhibits, and transcript designate this employee as Glynn Brooks. At the close of the hearing the entire record was amended to designate her Glynn Brooks Yarnell.

<sup>17</sup>We make no findings with respect to the reasons for these discharges which occurred prior to the effective date of the Act and which are not in issue herein.

<sup>18</sup>Evidence of the activities of the respondent in 1934 is contained in the partial transcript of testimony from the N. R. A. hearing conducted early in 1935, which transcript was introduced in this proceeding pursuant to a stipulation of the parties.

better sense" than to join the I. L. G. W. U., and that they [fol. 692] had been misled is doing so.<sup>19</sup> There is abundant testimony, also, that the respondent's instructors, who were in charge of the operators and at that time admittedly had authority to recommend lay-offs and dismissals, warned the operators to "let the International (I. L. G. W. U.) alone" if they expected to keep their jobs. In a conversation with an employee during 1934, Mrs. Allison, an instructor, labeled I. L. G. W. U. leaders "dirty foreigners,"<sup>20</sup> and Grace Gnotta,<sup>21</sup> also an instructor, referred to those who had joined that organization as the "scum" of the respondent's employees.

○ The dominant and often reiterated note in the respondent's anti-union campaign during this period was a plea to the employees to be loyal to Mrs. Nell Donnelly Reed, president of the respondent. For example, the record reveals that Mrs. Allison, one of the instructors, forbade a discussion of unionism in the plant, and added: "You should have more respect for your employer than to talk unionism in here." Mrs. Martha Gray, in charge of the respondent's outlet store,<sup>22</sup> talked to Virginia Stroup, an operator in one of the sewing sections who had joined the I. L. G. W. U., and reminded her that the firm had been good to her by continuing to employ her during the "hard months" and that in return Mrs. Stroup owed it to the Company to be fairer than to join the I. L. G. W. U. Mrs. Gray also said that she "would hate to think that old David Dubinsky would come in here and tell Mrs. Donnelly (Reed) what to do." The testimony of May Fike is undenied that in February 1935 or thereabouts,

<sup>19</sup>Mrs. Reeves denied saying that they had been misled, but did not deny the other quoted remarks attributed to her. She admitted having talked to these employees about their relationship to the I. L. G. W. U. and, in many instances was unable to remember whether she had made the statements that other witnesses testified to. We are convinced from the record that Mrs. Reeves engaged in the activities herein described and made the remarks we have quoted.

<sup>20</sup>Mrs. Allison denied ever having discussed the I. L. G. W. U. with Lillian Wales, the operator who testified concerning this remark. However, the record contains so many instances of anti-union statements attributed by other employees to Mrs. Allison that we are unable to accept her general denial in this instance, and accept as true the statement of Lillian Wales.

<sup>21</sup>In parts of the record this employee is referred to as Grace Gnotte.

<sup>22</sup>See *infra*.



while the I. L. G. W. U. drive was being pressed, employees in groups of 10 were sent by their instructors to Mrs. Reeves' office, where Mrs. Reeves talked to them about loyalty to the respondent. Also during this period employees were told that Mrs. Reed had built up the business of the respondent in order to keep them supplied with work and that an outside labor organization should not be allowed to come in to run it.

On or about December 12, 1934, Mrs. Reeves sent for Virginia Stroup, one of the respondent's employees who had obtained a charter for a local branch of the I. L. G. W. U. Mrs. Stroup told Mrs. Reeves that she was the shop chairman for the I. L. G. W. U. and that it was her duty to determine why employees who were members of [fol. 693] the I. L. G. W. U. were laid off. Mrs. Reeves stated that she did not intend to give Mrs. Stroup any information and immediately instructed Mrs. Hyde, the respondent's employment manager who was present at the interview, not to release any such information, for "that is none of Virginia's business." A short time later, when Mrs. Stroup attempted to negotiate with the respondent in regard to a grievance of Pauline Lutz, an employee who was a member of the I. L. G. W. U., the respondent unequivocally refused to deal with Mrs. Stroup. At the conference, Mrs. Reeves criticized Mrs. Stroup's production work, told her that she was wasting too much time away from her machine talking to other employees, and threatened her with dismissal unless she increased her piece-work production to a point where it met the minimum wage rate set by the N. R. A. code in effect at that time. The respondent stood firm on its position not to deal with the I. L. G. W. U. and Mrs. Stroup was entirely unsuccessful in adjusting the grievance of Pauline Lutz or of any other of the respondent's employees who were members of the I. L. G. W. U.<sup>23</sup> A few weeks later, the Kansas City office of the I. L. G. W. U. attempted to open negotiations with the respondent. On January 25, 1935, Meyer Perlstein, regional director of the I. L. G. W. U., and Virginia Stroup joined in addressing a letter to the respondent, stating that the I. L. G. W. U. had

<sup>23</sup>These facts are recited here for the purpose of showing the respondent's attitude toward the I. L. G. W. U. during this period.

granted a charter to a group of the respondent's workers who had applied therefor. The letter asserted that these employees, since joining the I. L. G. W. U., had suffered discrimination and had been threatened with discharge unless they should abandon their union affiliation. In conclusion, the respondent was requested to grant the I. L. G. W. U. an opportunity to present the views of labor and to adjust peaceably employer-employee differences. The record does not indicate whether or not the respondent made any reply to this letter.

Within a week or two after the receipt of the I. L. G. W. U.'s letter, the respondent, acting through certain of its supervisory employees, commenced the formation of an organization among its employees to be known as the "Nelly Don Loyalty League." Mrs. Martha Gray, in charge of the respondent's outlet store,<sup>24</sup> and Mrs. Strickland, an employee in the pattern-making department,<sup>25</sup> took the lead in forming the League. On February 5, 1935, plans were laid at a meeting at the home of Mrs. Gray, which was attended by approximately 46 employees representing the various divisions of the respondent's factory. Memberships for the League were solicited in the plant during working hours by circulation among [fol. 694] the employees of membership pledge cards<sup>26</sup> and a statement which declared that the employees recognized the generous treatment received from Mrs. Reed, the respondent's president, and would resist the efforts of outside labor organizations to negotiate with the respondent on their behalf.<sup>27</sup>

<sup>24</sup>See *infra*.

<sup>25</sup>The record does not disclose the details of Mrs. Strickland's employment except that she received a salary of \$80.00 per week, which was a salary higher than that received by any other employee in the pattern department.

<sup>26</sup>The pledge cards are as follows:

I, the undersigned, hereby pledge myself to become a member of the Nelly Don Loyalty League to take part in the activities and to support said league to the best of my ability.

I have signed this pledge of my own free will without coercion [sic] or intimidation of any kind.

<sup>27</sup>The full statement follows:

The employees of the Donnelly Garment Company hereby associate themselves under the name of the "Nelly Don Loyalty League."

In contrast to the hostility with which it met the advent of the I. L. G. W. U. in the plant; the respondent not only interposed no obstacles to the organization of the Loyalty League, but also by affirmative assistance facilitated its progress. In some sections of the plant the instructors in charge of the sections assisted with the circulation of these documents and told the employees to sign them. In other areas of the factory Mrs. Gray, accompanied by Mrs. Strickland, distributed the League membership cards. Virginia Stroup, who at that time was president of the local branch of the I. L. G. W. U.,<sup>28</sup> was told by Mrs. Strickland, in the presence of Mrs. Gray whom we find hereinafter to be a supervisory employee of the respondent, that the cards should be signed by the employees in order to protect their jobs, because Mrs. Reed would close the plant before she would allow it to become a union shop. At the same time, Mrs. Stroup was refused a membership card because she belonged to "another organization."

Virtually all the respondent's supervisors, except Mrs. James A. Reed, president and principal owner, Lee Baty, production superintendent,<sup>29</sup> and perhaps Mrs. Anna

We protest against and will resist all attempts of outside interference with the business of said company, or with our relations to the company as employees.

We recognize the fact that for many years this company has paid wages far in advance of the wages paid in similar factories. That our working conditions are good; that we have had practically continuous employment throughout the year which is almost unknown in this line of industry; that we have had generous and fair treatment from Nelly Don (Mrs. Reed), President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among the employees of the company.

This document was received as an exhibit by the Trial Examiner subject to further identification, after the witness, Rose Todd, stated when asked if it was sent out with the formation of the Loyalty League: "Yes, something similar to that, as near as I can tell it would be a copy." Subsequently, May Fike identified the document as the statement which was circulated among the operators at the time of the formation of the League. The record does not indicate that the document was thereafter unqualifiedly received in evidence by the Trial Examiner. In view of the testimony of these two witnesses, we hereby rule that the document was properly identified and it is hereby received in evidence.

<sup>28</sup>This was the local chartered by the International to admit employees of the respondent to the membership.

<sup>29</sup>At the time the League was organized in February, 1935, Mrs. Elizabeth Reeves was production manager. Mr. Baty did not succeed her until June 1935. Mrs. Reeves was a member of the League.

[fol. 695] Wherry, factory manager, were members of the League. Mrs. Reeves, production manager at that time, Dewey Atchison, her assistant, and Mrs. Ella Mae Hyde, employment manager, were among the supervisory officials who testified that they were members of the League. The membership included all instructors and other department heads in the plant. Its first two presidents were supervisory employees of the respondent. Herbert Mutchler,<sup>30</sup> who was no longer in the employ of the respondent at the time of the hearing in this proceeding, was the first president of the League and continued in office until early in 1937. He was succeeded by Rose Todd, who held office until after she was elected General Chairman of the D. G. W. U. in April 1937.<sup>31</sup>

The League has no constitution or bylaws and no regular meeting dates; nor do its members pay dues. Since its inception it has sponsored a number of social activities, such as picnics and dances, but as will subsequently appear its principal energies have been devoted to obstructing and interfering with the efforts of the I. L. G. W. U. to organize the respondent's employees.

The events recited above convince us that prior to the effective date of the Act the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the I. L. G. W. U. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the I. L. G. W. U. did so secretly. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant renunciation of unionism. In February 1935, when the I. L. G. W. U. requested a conference on behalf of those employees who had joined that organization, the respondent's agents immediately organized the Loyalty League for the purpose of preventing other employees from affili-

<sup>30</sup>The Trial Examiner found Herbert Mutchler was a supervisory employee. The record shows that Mutchler formerly held the position occupied by Rose Todd at the time of the hearing in this proceeding. Since we find in Section C 1, *infra*, that Rose Todd is a supervisory employee, we herewith make the same finding as to Mutchler.

<sup>31</sup>The formation of the ~~D. G.~~ W. U. is discussed in detail in Section C, *infra*.

ating with the I. L. G. W. U. The membership and influence of management representatives in the Loyalty League enabled the respondent to foster and organize employee resistance to outside unions.

The respondent contends that Mrs. Martha Gray, who "instigated" the League and at whose home the organizers met, is not a supervisory employee in charge of the outlet store, but is no more than the senior clerk in point of service, and that therefore the responsibility for her acts cannot be attributed to the respondent. We cannot agree with this contention. In the first place, we believe that the evidence establishes that Mrs. Gray is the manager of the store. The store, which is located in the same building with the respondent's factory, is operated to dispose of remnants, discontinued lines of merchandise and the like. It employs approximately 6 saleswomen. Rose Todd, who had been an employee of the respondent for a number of years, and whom we find *infra* to be a supervisory employee, stated when asked about Mrs. Gray's relation to the outlet store: "I assume you would say that she is in charge." Mrs. Elizabeth Reeves, who at the time of the hearing was in charge of the respondent's merchandising department, testified that Mrs. Gray generally reported to her. Since Mrs. Reeves does not personally operate the outlet store, it is reasonable to believe that the duty was left to Mrs. Gray and that it was matters pertaining to the management of the store which she reported to Mrs. Reeves. That the employees regarded Mrs. Gray as in charge of the outlet store is evidenced by the publication of the following announcement in the N. D. A. A. News, a news sheet published by an athletic association composed of employees:

Mrs. Gray Announces  
Spring and Wool Remnants  
Closeouts

Also Virginia Stroup, one of the respondent's operators at the time the League was organized, considered Mrs. Gray an "executive" of the respondent. Mrs. Gray testified, but did not describe the nature of her duties. While it is true that she does not have authority to hire or dis-



charge the other clerks in the store, we are convinced from the evidence that Mrs. Gray directs the work of these salespeople and is responsible for the store. On the basis of the above-stated facts we find that Mrs. Gray is the manager of the respondent's outlet store, and as such is a supervisory employee for whose statements and acts relating to labor policies the respondent is responsible. Moreover, the respondent is responsible for the acts of Mrs. Gray, Mrs. Stickland, and others who assisted them in bringing the Loyalty League into existence, inasmuch as the respondent's officials ratified and adopted their acts by joining and participating in the League and by permitting those individuals and instructors who were supervisory employees to circulate pledge cards and canvass for membership on company time and property, as we have hereinabove found. Membership of such officials as the employment manager, the production and merchandise manager, assistant manager, instructors, and other supervisors with authority to discipline and to recommend discharges and lay-offs, coupled with their patent support, must inevitably have convinced the rank and file of the respondent's employees that here was an organization approved by the respondent, to which they must give their support, and that they must correspondingly refrain from joining or assisting the I. O. G. W. U. which the League so consistently opposed.

[fol. 697] The respondent contends that since the above-related activities took place prior to July 5, 1935, the effective date of the Act, they are entirely irrelevant to the issues in this proceeding and that all evidence thereof should have been excluded. This contention fails to recognize that the Loyalty League continued in existence after the effective date of the Act, and was a useful instrument in the formation of the D. G. W. U., hereinafter discussed. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted in evidence for the purpose of evaluating the significance of events occurring after such date.<sup>32</sup>

<sup>32</sup>See *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 303 U.S. 272, rev'd 91 F.(2d) 458, and *ent'g Matter of Pacific Greyhound Lines, Inc. and Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431.

Having been inspired by the respondent and fully supported by its officials from its inception, we conclude and find that the League was dominated and controlled by the respondent and that prior to the effective date of the Act the respondent used it to prevent its employees from joining the I. L. G. W. U. or any other outside labor organization.<sup>33</sup>

**B. Interference, restraint, and coercion prior to April 27, 1937.**

After the National Industrial Recovery Act was declared unconstitutional<sup>34</sup> in 1935, and the complaint issued against the respondent under Section 7 (a) of that Act was dismissed, the I. L. G. W. U. continued to some degree its efforts to enroll the respondent's employees as members but it was not until early in 1937 that an intensive campaign was renewed. On February 26, 1937, there appeared in the Kansas City Star, a daily newspaper published in Kansas City, Missouri, an article stating that the I. L. G. W. U. had announced a campaign to organize the respondent's employees and had appropriated a large sum of money to be spent in a drive for recognition of the I. L. G. W. U. as the collective bargaining agent in the respondent's plant.<sup>35</sup>

[fol. 698] A few days thereafter, on March 2, 1937, three members of the League<sup>36</sup> circulated among the factory and office employees of the respondent a loyalty pledge, which

<sup>33</sup>See *infra* for further findings concerning the League after the effective date of the Act. As to the events described in Section A, above, we make no findings of unfair labor practices, since they occurred prior to the effective date of the Act.

<sup>34</sup>See *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, declaring unconstitutional 48 Stat. 195, *et seq.*

<sup>35</sup>Meyer Perlstein, regional director of the I. L. G. W. U., was quoted in the article as saying: "We are going to send a letter to the Donnelly Garment Company within a week suggesting a conference to establish collective bargaining on the question of wages and working hours. If the firm refuses, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now. . . . Within a year we'll have it [the respondent's plant] completely organized. As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers."

<sup>36</sup>Mary Sprofera and Inez Warren, shipping clerks, and Pauline Schartzner, an office employee.

declared that the signers refused to "acknowledge any union labor organization."<sup>37</sup>

The pledge was circulated in the plant during working hours and in some, if not all, of the production sections it was passed from person to person for signature, at the instance of the instructors, while the machines were in operation. It was signed by some 1125 employees—practically all of the respondent's factory and office employees except the instructors who were not asked to sign it in the first instance.<sup>38</sup> When the pledge was presented to Mrs. Reed at her house on the afternoon of March 2, she expressed her pleasure at receiving such a statement, and requested that the signatures of the instructors be added. This was done on March 5. Thus, the respondent not only ratified that action but by express request had it circulated among other employees.

The respondent contends that it cannot be held liable for commission of an unfair labor practice in connection with the circulation of the pledge since the three employees who initiated the pledge had no supervisory authority and circulated it without instructions or suggestions of the management. We reject this contention and find that the respondent by permitting three employees openly to circulate the loyalty pledge in the plant during working hours with the assistance of instructors, and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the I. L. G. W. U., and thereby interfered with, restrained and coerced them in the free choice of a collective bargaining agent.<sup>39</sup>

<sup>37</sup>The text of the pledge: "We, the undersigners [sic] as members of the Donnelly Garment Co. wish to make it known that we are positively happy and contented with the positions which we hold with this organization, and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed." The girls who circulated the pledge stated that they devised the pledge in answer to the announcement of the I. L. G. W. U.

<sup>38</sup>The record does not explain the original omission of the instructors as signatories to the petition.

<sup>39</sup>It may be noted that the circulation of this loyalty pledge, coincidental with the renewed organizational activities of the I. L. G. W. U. among the respondent's employees, bears striking similarity to the circulation of the Loyalty League membership cards and anti-union statements by the respondent 2 years earlier, soon after the I. L. G. W. U. had initiated its cam-

On March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, president of the I. L. G. W. U., at a meeting of 700 union members in Kansas City, had officially launched a movement to organize employees of the respondent company. This announcement [fol. 699] was followed by a letter to the respondent from Wave Tobin, manager of the Kansas City Joint Board of the I. L. G. W. U., under date of March 9, 1937, requesting a bargaining conference between the I. L. G. W. U. and representatives of the respondent.<sup>40</sup>

Concurrently with the renewed organizational campaign of the I. L. G. W. U. the League was aroused to new activity.<sup>40a</sup> A meeting of all the respondent's employees took place on the afternoon of March 18, 1937, in the building housing the respondent's plant.<sup>41</sup> The employees were notified orally during the working day by their instructors or other supervisory employees of the respondent that the meeting was to take place. The record affirmatively shows that among the supervisory employees who attended was Mrs. Ella Mae Hyde, the respondent's employment manager, and the instructors. It is not denied by the respondent, and we find, that this meeting was generally attended by supervisory employees.

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paign among the employees. In each instance, the pleas to the employees to be loyal to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the I. L. G. W. U. to organize the respondent's employees.

<sup>40</sup>In the meantime, the record indicates that the respondent's employees had become alarmed by hearing reports that at other garment factories in the Kansas City area, where the I. L. G. W. U. was conducting organizational campaigns, clashes had occurred involving picketers, non-striking workers, and local police. The Trial Examiner excluded evidence of these incidents, occurring elsewhere than at the respondent's plant and not involving the respondent's employees, and we have affirmed his ruling. During the course of the hearing the Trial Examiner stated that he would permit testimony of threats of violence made directly to employees of the respondent by representatives of the I. L. G. W. U. Some of the respondent's employees discussed the reports and expressed fear that an organizational campaign at the respondent's plant might precipitate similar strikes and violence.

<sup>40a</sup>During the 2 years which intervened between the formation of the League and the date of this renewed activity, there is no evidence that its character had been altered in any way. Its original purpose was never disavowed and officials and supervisors of the respondent continued to hold membership therein.

<sup>41</sup>The meeting was held on the second floor of the building in which the respondent's plant was located. However, the respondent, on March 18, 1937, did not have the second floor under lease.

Rose Todd, president of the League, called the meeting and presided. Chairs for the meeting were rented from the Kansas City Chair Rental Company in the name of the League. A committee appointed at this meeting to act on behalf of the employees thereafter employed attorneys whose retainer fee was paid by a check of the Loyalty League. From these facts we conclude, despite the denial of Rose Todd,<sup>42</sup> that the gathering was a meeting of the respondent-dominated Loyalty League.

Rose Todd made certain opening remarks,<sup>43</sup> after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the I. L. G. W. U. under date of March 9, 1937, requesting a conference, which letter was read to the employees. Mrs. Reed thereupon [fol. 700] made an extemporaneous talk. She expressed her pleasure at receiving the loyalty pledge which had been presented to her on March 2, told the employees that the respondent corporation was an institution to be proud of, that it had taken care of its employees by keeping the plant in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence that the I. L. G. W. U. was alleged to have made against the employees of the company, and promised protection against such violence. Finally, she directed her remarks to the question of unionization of the plant. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated that she would close her factory before she would permit it to be unionized and that she would not allow "Dubinsky or any other 'ski' to tell her how to run her business." According to the respondent's version,<sup>44</sup> Mrs. Reed stated "... neither Dubinsky or any other buttinsky is going to intimidate me or the company into forcing you to join the

<sup>42</sup>At the hearing Rose Todd testified that the meeting was a "spontaneous" gathering of the employees to discuss what means might be adopted to protect the respondent's employees against anticipated violence in connection with the I. L. G. W. U.'s projected organizational campaign.

<sup>43</sup>She was unable to recall what she said at that time.

<sup>44</sup>The respondent placed in evidence a purported transcript of Mrs. Reed's talk. The circumstances surrounding the production in this proceeding of a transcript of Mrs. Reed's remarks are somewhat peculiar. Mrs. Frances



International Union (I. L. G. W. U.) against your will." The respondent's version is corroborated by Mrs. Ella Mae Hyde, employment manager, by Rose Todd, who also denied that Mrs. Reed said there would be no union in her plant, and by several other witnesses. The respondent also offered to put on the stand about 1,000 of its employees who would testify that Mrs. Reed's version of what she said was correct and would deny that she said she would not permit the I. L. G. W. U. to come into her plant. The D. G. W. U. likewise offered to call as witnesses a large number of employees who would deny that Mrs. Reed said at the March 18 meeting that she would not permit members of the I. L. G. W. U. to work in the Donnelly plant. These offers were rejected by the Trial Examiner at the hearing because the testimony was cumulative in character. We have affirmed these rulings.

[fol. 701] The Trial Examiner found that Mrs. Reed stated that she would close her factory before she would permit it to be unionized. However, we do not consider it necessary to resolve the precise conflict on this point since in our view, upon Mrs. Reed's own version of her speech, the March 18 meeting and the events which took place there constituted an unfair labor practice, as alleged in the complaint. We have found that the meeting was sponsored by the League, which was controlled by the respondent, and was attended by many of the respondent's supervisory

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Strine, Mrs. Reed's secretary, testified that she made the transcript on the instruction of Mrs. Reed. The tenor of Mrs. Reed's remarks at the March 18 meeting was the subject of testimony in the injunction suit brought by the respondent against the I. L. G. W. U. in the United States District Court for the Western Division of the Western District of Missouri. In that suit, Mrs. Reed filed an affidavit stating the substance of what she claims to have said at the March 18 meeting, and her secretary, Frances Strine, made three affidavits concerning Mrs. Reed's appearance at the meeting. Yet in none of the affidavits is any mention made of the taking of a transcript of the speech. Mrs. Reed herself testified in rebuttal in the District Court suit and did not tell of it. Frances Strine stated she had not seen the copy placed in evidence between the day it was transcribed and the day she identified it at the hearing. At the oral argument before the Board in Washington the respondent stated in explanation of its failure to produce the transcript of Mrs. Reed's speech in the injunction suit before Judge Miller that Mrs. Reed's testimony in rebuttal on this matter was met by objections which were sustained by the trial judge and that the evidence offered by the I. L. G. W. U. was so weak and discredited that it was unnecessary to answer it in detail by introducing the transcript.

employees. Through the presence of supervisors and the sponsorship of the League, which had for its purpose the exclusion of outside union organizations from the plant, the employees must inevitably have been aware of the anti-union character of the meeting, and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the I. L. G. W. U., but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the I. L. G. W. U., the respondent seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed painted the I. L. G. W. U. as the common enemy of both the respondent and its employees, and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labeled David Dubinsky, president of the I. L. G. W. U., a "buttsinsky," who was seeking to force the respondent's employees to join that union. She promised that no employee would be compelled to join any union against his will.\* While Mrs. Reed sought to appear as the disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, against the background of the respondent's widely publicized hostility to the I. L. G. W. U. and the past repeated reminders to employees that loyalty to the respondent demanded repudiation of outside union organizations, we think that Mrs. Reed's remarks made it plain that the respondent's attitude toward unionization had not changed and that membership of any of the employees in the I. L. G. W. U. would not be tolerated.

We find that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's talk at said meeting, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Before the meeting closed a committee composed of Rose Todd, Hobart Atherton, and Sally Ormsby was appointed

\*This statement should be contrasted with Mrs. Reed's approval of the closed-shop agreement with the D. G. W. U. less than 2 months later. See *infra*, Section C 2.

and authorized to take steps necessary to provide protection [fol. 702] for the employees. On March 27, 1937, this committee called on the law firm of Gossett, Ellis, Dietrich and Tyler of Kansas City, Missouri, where they conferred with Frank Tyler, a member of the firm. They stated that they represented the respondent's employees and desired to know what legal steps they might take to protect themselves from the alleged threats of the I. L. G. W. U. Mr. Tyler tentatively suggested the possibility of an injunction and promised to investigate the matter if a retainer fee of \$500, were paid.

On March 30, 1937, Rose Todd went to the First National Bank of Kansas City, Missouri, and there consulted with Edward F. Swinney, Chairman of the Board of the Bank, who agreed to lend her \$1,000 on the note of the Loyalty League, without any other security. The note bears the signature "The Nelly Don Loyalty League, Rose Todd—President." Swinney testified that no one other than Rose Todd communicated with him in any way concerning the loan and no one guaranteed its repayment, "except Miss Todd said she would see it was repaid." Swinney further testified that he had known Rose Todd for 10 or 12 years, that he had first met her at his office in the bank as "a kind of 'all-around man' for the company." The First National Bank carries the account or accounts of the respondent corporation, and personal accounts of Mrs. Nell Donnelly Reed, and of her husband, James A. Reed. At the time of the hearing the Loyalty League note had been repaid from monies collected through assessment, of members of the League.

Out of the \$1,000 loan Attorney Tyler received a check for \$500, dated April 1, 1937, and bearing the signature "The Nelly Don Loyalty League, Rose Todd, Pauline Hartman."

Attorney Tyler investigated the use of an injunction as a means of obtaining protection for the respondent's employees and on April 13, 1937, the day following the decisions of the Supreme Court of the United States upholding the constitutionality of the Wagner Act,<sup>46</sup> he reported to

<sup>46</sup>N. L. R. B. v. Jones & Laughlin Steel Corporation, 301 U.S. 1, and other cases decided by the Supreme Court of the United States on the same day.

the committee adversely on the use of an injunction proceeding and recommended the organization of a plant union as the most effective means of "securing protection."

In the meantime, on April 22, 1937, the Kansas City Journal-Post, a daily newspaper, carried an announcement by the I. L. G. W. U. that Sylvia Hull, one of the respondent's operators, had been named as a delegate to the biennial convention of the I. L. G. W. U. Sylvia Hull appeared for work as usual at the respondent's plant on the morning of April 23. A few minutes after 8 o'clock while she was working at her machine on the eighth floor of the plant two groups of employees—each consisting of [fol. 703] 15 or 20 persons—successively gathered at Sylvia Hull's machine. They demanded to know what authority she had to represent them at the I. L. G. W. U. convention. Some of the girls stood on top of nearby tables. They sang Loyalty League songs, told her they would not allow her to belong to a union, demanded that she surrender her League pin, threatened to tear her clothes off and to throw her out of the window. Mrs. Allison, the instructor in charge of Sylvia's section, was present throughout the demonstrations and did not order the girls back to work or take any action of the kind; Mrs. Bogart, in charge of the dividing department, was present and pointed Sylvia out to some of the demonstrators. Mrs. Hyde, the respondent's employment manager, appeared at the scene of the demonstration and told the demonstrators to return to work. The girls refused, saying they would not work while Sylvia was there. Mrs. Hyde thereupon took Sylvia down to her office on the seventh floor. They were followed by a number of the demonstrators, shouting that they would not return to work until they heard Sylvia say she would go home. Sylvia then said: "I will go home. I didn't know the girls felt this way about it or I wouldn't have done it." According to Sylvia's testimony, which is undenied, Mrs. Hyde told her she would have to go home. Sylvia replied that she did not want to quit, but would go home for the day. Mrs. Hyde took her employee identification pass and Sylvia left a telephone number through which she might be reached.<sup>47</sup>

<sup>47</sup>The alleged discriminatory discharge of Sylvia Hull is discussed in Subsection D, *infra*.

Later, during the same morning on which the above described incidents occurred, Fern Sigler, an operator who had displayed on that day for the first time her I. L. G. W. U. membership pin, was subjected to three similar demonstrations. These three demonstrations took place at intervals between 8 and 10:30 o'clock. The second and third groups of demonstrators numbered as many as 40 or 50 employees from various floors of the plant. They surrounded Mrs. Sigler's machine, sang songs, derided her, took her League pin from her, and shouted: "Get up and go home; we don't want you in here." The demonstrations subsided when Lee Baty, plant superintendent and production manager, accompanied by Rose Todd, ordered Fern from her machine to a nearby office. As Fern left the floor the girls shouted: "We are not going to work as long as she remains here." After a conference participated in by Baty, Mrs. Hyde, Rose Todd, and Fern Sigler, Mrs. Sigler was sent home. Baty promised to talk to the girls and "quiet them down," and to call her back when the unrest had subsided. Despite his promise, Baty admitted at the hearing that he did nothing to allay antagonism toward the I. L. G. W. U. in the plant.

[fol. 704] Without deciding whether the respondent was responsible for originating and inciting these anti-I. L. G. W. U. demonstrations, we are convinced that the respondent condoned, approved, and encouraged them. In the first place, the respondent made no sincere efforts to check the demonstrators. During the demonstrations instructors and some other supervisory officials stood by and made no effort to take steps which might have been effective in terminating the demonstrations. Even Lee Baty and Mrs. Hyde watched the demonstrations for a short time without seriously attempting to stop the participants. In the second place, the method which the respondent finally adopted to end the demonstrations revealed its attitude of approval. Instead of disciplining the demonstrators who had disrupted the normal operation of the factory for 2 hours or more, the respondent capitulated at once to their demands and laid off the two members of the I. L. G. W. U., who had admittedly violated no rule of the respondent and were attempting to do their work. Lee



Baty, the respondent's production manager, claimed that there was no other way of restoring order in the plant. Even if it was necessary to remove these two employees from the floor at the time of the demonstrations, the respondent could then have made it clear to the demonstrators and their sympathizers that no further demonstrations against these two employees would be tolerated and that any efforts to stage them would result in severe personal discipline. Furthermore, the respondent's officials did not discipline or reprimand in any way those employees who participated in the incidents. Finally, we think the approval and encouragement of the respondent is shown by the fact that despite Baty's promise to Fern Sigler that he would "quiet the girls down," he admitted at the hearing that he did nothing after the demonstrations to protect these two or any other employees who were members of the I. L. G. W. U. from the recurrence of such demonstrations and the accompanying threats of violence, or otherwise to make it possible for these two employees to return to their work in the plant unmolested.

We find that the respondent approved of and encouraged the demonstrations and took advantage of them to reveal once more to its employees its hostility to the I. L. G. W. U. and its support of anti-I. L. G. W. U. activities. We further find that by such action the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.<sup>15</sup>

We further find that by using the company-dominated Loyalty League, as hereinabove described, for the purpose [fol. 705] of impeding and preventing the organization of its employees by the I. L. G. W. U., the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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<sup>15</sup>See *Matter of General Shoe Corp. and Georgia Federation of Labor*, 5 N. L. R. B. 1005, mod. and enf'd in *N. L. R. B. v. General Shoe Corp.*, 99 F.(2d) 223 (C.C.A. 5); *Matter of General Motors Corp. and Delco-Remy Corp. and International Union of U. A. W. A., Local No. 146*, 14 N. L. R. B. 113.

C. Domination and interference with the formation and administration of the D. G. W. U. and contribution of support.

On April 27, 1937, a meeting of employees took place immediately after working hours on the second floor of the building in which the respondent's plant was located.<sup>49</sup> The record establishes that it lasted approximately an hour. Rose Todd opened the meeting and stated that its purpose was to organize a union which would be called the "Donnelly Garment Workers' Union." Miss Todd pointed out that the League was no longer adequate to withstand the pressure of outside labor organizations and that a plant union had become necessary. She thereupon introduced Attorney Tyler who advised the assembled employees to form an independent, unaffiliated labor organization. After his talk it was unanimously decided by a viva voce vote of the approximately 1,300 assembled employees to form such a union. A nominating committee of five was then appointed by Rose Todd to select a General Chairman and eight Group Chairmen to serve as representatives and officers of the new organization. While the committee retired to select its nominees, charter membership cards, previously prepared, were distributed for signature. Thereafter, Attorney Tyler read the bylaws which the committee had requested him to draft.<sup>50</sup> They were immediately adopted without alteration. The nominating committee returned to the meeting and presented the names of the nominees for offices in the organization, who were unanimously elected, with Rose Todd as General Chairman. The 1,300 membership cards previously distributed were collected and the meeting declared adjourned.

<sup>49</sup>At the time of this meeting, the respondent did not have under lease the second floor of the building in which its plant was located, but leased only floors three to ten.

<sup>50</sup>The bylaws reveal that the purpose of the D. G. W. U. was in part the same as that of the Loyalty League, which, in the words of Rose Todd, had become inadequate to give the employees the "protection" they needed.

Article 2 of the bylaws provides *inter alia*: "The purpose of this organization (D. G. W. U.) shall be . . . the protection of employees and members of this Union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not-employees in this plant."

The Loyalty League played a leading role in the formation of the D. G. W. U. Rose Todd testified that she, Hobart Atherton, and Sally Ormsby were instrumental in calling the meeting of April 27 after "a general request from a great many employees that we try to do something for our own protection." The persons named constitute the committee appointed at the Loyalty League meeting of [fol. 706] March 18 to determine what could be done by way of protection against the I. L. G. W. U. The ledger sheets of the Kansas City Chair Rental Company show that chairs were rented by the Nelly Don Loyalty League for use on that date,<sup>51</sup> and the canceled checks of the Loyalty League show that the League drew a check in favor of the Chair Rental Company on May 4, 1937, in payment therefor. The respondent's telephone operator called on the interdepartmental telephone system each department of the plant and gave notice that Rose Todd was calling a meeting of employees on the second floor after work. Instructors and other supervisory employees assisted in notifying the employees and sending them to the meeting.<sup>52</sup> Rose Todd presided at the meeting, but denied that she was acting in her capacity as president of the Loyalty League.

On the basis of the evidence above recited, we find that the meeting of April 27 was sponsored and financed by the Loyalty League, through its president, Rose Todd, and the committee appointed by it at the meeting of the League on March 18.

The assistance rendered by the Loyalty League in the formation of the D. G. W. U. was not limited to sponsoring and financing the organizational meeting of April 27. We have already pointed out that the committee appointed at the League meeting on March 18, 1937, engaged Attorney Tyler, that Rose Todd borrowed \$1,000 in the name of the League and out of that loan paid \$500 to Tyler as a retaining fee. Members of the League were subsequently

<sup>51</sup>The ledger sheet gives as the date of the rental April 28, 1937, but the manager of the K. C. Chair Rental Company testified that entries are made in the ledger the day on which the chairs are returned rather than, on the day they are delivered.

<sup>52</sup>See *infra*, note 55.

assessed 50 cents each in order to retire that obligation.<sup>63</sup> Although it is contended that the \$500 retainer fee was in payment only for advice concerning a projected injunction suit against the I. L. G. W. U. for the protection of the respondent's employees, we are convinced that the fee covered Tyler's services in connection with the organization of the D. G. W. U. Prior to the organization of the D. G. W. U. the proposed injunction suit was rejected as a method of protection and instead Tyler advised the League committee to form an unaffiliated union. He attended the April 27 meeting and read the bylaws which he had previously drafted on instruction of the League committee. Thereafter, in May and June 1937, he drafted proposals for a closed-shop contract and wage agreement [fol. 707] with the respondent. Tyler received no fees from the D. G. W. U. until November 23, 1937, which was 7 months after its formation and at a time when the D. G. W. U. had undertaken other legal action involving court litigation. The minutes of the Group Chairmen of the D. G. W. U. for June 15, 1937, record that Rose Todd stated in explanation of the fee: "... we paid Mr. Tyler \$500 retainer's fee. He helped us write up our bylaws and working agreement and will advise us and help us when we need it." From these facts we find that the League financed the employment of Attorney Tyler, paid him a retainer fee of \$500, and that the said fee covered the cost of his services in connection with the formation of the D. G. W. U. and the drafting of its bylaws.

The day after the organizational meeting Rose Todd took the membership cards to Mrs. Reed, president of the respondent, and told her that the D. G. W. U. represented a majority of the employees. Mrs. Reed assured her at once that the respondent would consider the proposals of the D. G. W. U. On May 6, 1937, the Group Chairmen represent-

<sup>63</sup>At the hearing there was a controversy as to the date of the League meeting at which the assessment was decided upon. The respondent contended it occurred between March 27 and April 5, 1937, before the organization of the D. G. W. U. was conceived. Mrs. Elsa Graham Greenhow testified that she took minutes of such a meeting and that it occurred on May 25, 1937, immediately after a meeting of the D. G. W. U. It is unnecessary to resolve this conflicting testimony inasmuch as we find that the League paid the \$500 retainer fee to Attorney Tyler, and that said fee covered the cost of his services in connection with the formation of the D. G. W. U.

ing the D. G. W. U. met with Mrs. Reed and discussed certain matters concerning the terms of an agreement, covering all the respondent's employees. From these facts it seems clear, and we find, that recognition as the exclusive bargaining agent of the employees was accorded the D. G. W. U. almost as soon as it was organized, although no statement of recognition in writing appears until the contract between the respondent and the D. G. W. U. was signed on May 27, 1937, as hereinafter discussed.

After the conference between Mrs. Reed and Rose Todd on April 28, at which Mrs. Reed agreed to consider the proposals of the D. G. W. U., Attorney Tyler commenced to draft an agreement for the D. G. W. U. to present to the respondent. The proposed draft of the agreement, containing a closed-shop provision, was approved by the Group Chairmen of the D. G. W. U. on the morning of May 27 and presented at once to Mrs. Reed. Attorney Tyler read it to her and other representatives of the respondent and urged that it be given prompt attention. Mrs. Reed replied: "I would like to have a little time to look over this agreement. However, I think it is very much in line—there will possibly be one or two little changes." Later, she added: "I think the only changes it will be necessary to make will just be legal phraseology—the spirit of this agreement is satisfactory." The minutes kept by the secretary of the Group Chairmen of the D. G. W. U. do not indicate that there was any discussion of the provisions, although several of the respondent's witnesses declared extended discussion took place. At the close of the conference it was agreed that Mrs. Reed and other representatives of the respondent would meet with Rose [fol. 708] Todd and Mr. Tyler, attorney for the D. G. W. U., at 3 o'clock that afternoon, and that Mr. Tyler could then report the outcome to the committee of Group Chairmen of the D. G. W. U. at 3:30 o'clock. When the D. G. W. U. committee met in the afternoon, as agreed, its minutes disclosed that Mr. Tyler reported that the respondent had proposed three or four modifications, acceptance of which he recommended to the committee. The only important change in the substance of the agreement was the addition of Section 4:



The employer recognizes the election of a committee of the union to represent it, *provided members of such committee shall have been continuously employed by the employer for the period of at least a year immediately preceding election to such committee . . .*<sup>1954</sup>

Attorney Tyler explained to the committee that the purpose of such a provision was "to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company." The agreement as modified was then adopted by the committee representing the D. G. W. U. and signed by the parties.

Subsequently, on June 22, 1937, a supplemental agreement was entered into between the D. G. W. U. and the respondent. This agreement dealt with minimum wages for piece-work operators and other employees which had not been included in the earlier agreement. For the purpose of determining wage rates operators paid on a piece-work basis were classified in four groups. This classification was prepared for the D. G. W. U. by Lee Baty, production manager of the plant, and accepted by the committee representing the D. G. W. U. without change. The terms of the supplemental agreement were never submitted to the D. G. W. U. membership for approval. The D. G. W. U. demanded a minimum weekly wage of \$16.50 for the respondent's lowest paid piece-work operators. Rose Todd explained that the I. L. G. W. U. had announced that it was seeking a \$16.00 weekly minimum in the garment industry and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the I. L. G. W. U. to organize the respondent's employees. The respondent acceded to this demand. By its terms the original agreement of May 27, 1937, was to remain in effect for a period of 2 years, while the expiration date of the supplemental wage agreement of June 22, 1937, was set for July 1, 1938, with a provision for automatic extension from year to year unless either party gave written notice to the other of a desire to terminate it. On June 2, 1939, the original

[fol. 709] agreement of May 27, 1937, was extended for a year period without essential modification. So far as the record indicates the supplemental wage agreement has continued in effect without change.

In August or September 1937 the respondent agreed, at the request of the D. G. W. U. to a check-off of the monthly dues of 25 cents. Each employee signed a card prepared and distributed by the respondent, agreeing to permit his dues to be checked off at the end of each month. Pursuant to the agreement the respondent submits to the D. G. W. U. each month a memorandum showing the number of employees on the pay roll during the month and a check covering their dues. The D. G. W. U. issues no receipts, keeps no record of individual dues payments, and has no means of knowing what individuals paid dues in past months. Nor were the general chairman and the treasurer of the D. G. W. U. able to state at the hearing what proportion of each month an employee must work to entitle the D. G. W. U. to collect his dues from the respondent.

Soon after the D. G. W. U. was organized the Group Chairmen who composed its executive committee appointed a committee to represent the D. G. W. U. in adjusting piece-work rates with the respondent. Some 600 to 800 of the respondent's 1,300 employees were paid on a piece-work basis and the work of this committee was described as one of the most important functions of the D. G. W. U. The committee appointed consisted of Mrs. Lula Nichols, Josephine Spalito, and Rose Todd. Mrs. Nichols and Miss Spalito are employed by the respondent for the purpose of setting piece-work prices. The record shows that Mrs. Nichols has final authority in setting the rates on behalf of the respondent. The procedure of setting piece-work prices in the first instance and of adjusting subsequent complaints of operators that the price set is too low, is described in the following testimony of Mrs. Reeves:

A. After a garment is designed, that particular garment is analyzed very thoroughly by Mrs. Nichols, who was a former piece-work operator; Joseph Spalito, a former piece-work operator; Rose Todd, a former piece-

work operator. Prices are then discussed with the operator, and also the instructor . . .

Q. If there is any employee who thinks the price is too low, what redress does she have?

A. She discusses it with the people who set prices—Miss Todd, Mrs. Nichols, or her instructor . . .

Q. Who has complete charge of the making of piece rates after the report is made by this committee?

A. Mrs. Nichols. (Ibid)

Thus, it becomes clear that the same persons who set the rates on behalf of the respondent in the first instance are [fol. 710] also representatives of the D. G. W. U. for the purpose of protesting, and negotiating with regard to those rates.

In connection with the formation and subsequent administration of the D. G. W. U., property of the respondent has been freely utilized. Membership cards were mimeographed after working hours by employees in the respondent's Circular Department on a machine owned by the respondent. Copies of bylaws of the D. G. W. U. were produced on a ditto machine belonging to the respondent. The D. G. W. U. owns no typewriter and the secretary of the D. G. W. U. has often used a typewriter owned by the respondent for typing the minutes of meetings of the D. G. W. U. and of the Group Chairmen. The respondent's bulletin boards have been freely used for the posting of announcements, notices of D. G. W. U. meetings and for a display of pins from which the D. G. W. U. pin was chosen. Rose Todd keeps the membership cards of the D. G. W. U. in a file of the respondent which is located near her desk in the plant.

Meetings of the D. G. W. U. are announced by sending a so-called I. D. M. to each department of the plant through the respondent's regular messenger service. An I. D. M. is the respondent's term for interdepartmental memoranda. Memoranda concerning the D. G. W. U. business pass through the same channels as those of the respondent. The thread girls in the various sewing sections, who are assistant instructors, receive the D. G. W. U. notices and take responsibility for their circulation.

to the operators in their respective sections.<sup>55</sup> Mail addressed to the D. G. W. U. is also delivered to D. G. W. U. representatives by the respondent's employees.

The D. G. W. U. has never maintained an office outside the respondent's plant, and since its inception has conducted all of its business in the building occupied by the respondent. At a meeting of the D. G. W. U. on May 11, 1937, Rose Todd stated:

There are probably a number of you that have not had occasion recently to be on the ninth floor, but on the right-hand side of the door you will find a desk where our work will be conducted.

At this desk, which was assigned by the respondent to Rose Todd in connection with her work as supervisory employee, is conducted the day-to-day business of the D. G. W. U. Membership cards not collected at the organizational meeting on April 27 were subsequently signed and left at the desk by employees. Cards authorizing the check-off were signed by the members of the D. G. W. U. at Rose Todd's desk. The respondent made a practice of sending communications relating to the D. G. W. U. to Miss Todd's desk for her attention. The Group Chairmen, who composed the executive committee of the D. G. W. U., met for several months in the office of Beulah Spilsbury, a supervisory employee, and later in the respondent's first-floor auditorium. No rental was ever paid for the use of this property.

Regular monthly meetings of the D. G. W. U. were held on the second and later on the first floor of the building occupied by the respondent, which building was owned by the Corrigan Estate. At the time of the organization of the D. G. W. U. neither of these floors was under lease to the respondent, but on May 10, 1937, the respondent signed a

<sup>55</sup>The respondent offered to prove by the testimony of the employees that no instructor or supervisor had directed them to attend meetings of the D. G. W. U. Since there is no conflict between this offer and the testimony that thread girls were responsible for the distribution of notices, there is no prejudicial error in the rejection of this offer of proof. We think that the offer does not apply to the organizational meeting on April 27, 1937, since that was not, at the outset, a meeting of the D. G. W. U., but was, as we have found, a meeting sponsored by the Loyalty League.

lease for all ten floors of the building and has since continued to lease and occupy all of these floors. Prior to May 10, the D. G. W. U. obtained the permission of the representative of the Corrigan Estate to use the second floor as a meeting place, and paid no rent therefor. After May 10, the D. G. W. U. continued to meet there until the respondent remodeled a portion of the first floor to serve as an auditorium, which then became the meeting place. Although the witnesses, Rose Todd and Lee Baty, stated that a monthly rental was agreed upon in May 1937, we think the record is clear that the question of paying rent for this space was not considered for some months after the respondent had become the lessee of the space, and that the respondent never broached the matter to the D. G. W. U. The minutes of the Group Chairmen of the D. G. W. U. show that on November 13, 1937, the D. G. W. U. raised the question of rental payments and that the respondent subsequently agreed to charge \$3 per meeting, to be paid at the end of the D. G. W. U.'s fiscal year.

Rose Todd was a full-time employee of the respondent. At the same time, as General Chairman of the D. G. W. U., she carried on the business of that organization representing 1,300 or more employees. Soon after the formation of the D. G. W. U. at the respondent's Kansas City plant, Rose Todd went out to the respondent's temporary auxiliary plant at St. Joseph, Missouri to organize the employees there. She was absent from her employment about one-half day without any salary reduction. At a meeting of the D. G. W. U. on May 11, 1937, she made the following statement:

I do want to say this, that any of you, at any time, that want to talk to me, remember I can always be reached at noon *or any time necessary.*<sup>56</sup>

[fol. 712] Miss Todd's testimony indicates that grievances are reported to her during the working day, often dealt with at once, and their disposition reported to the aggrieved employee soon thereafter. Miss Todd checks on behalf of the D. G. W. U. all of the piece-work prices fixed

<sup>56</sup>Italics added.



by the respondent and all written instructions issued by the respondent to its operators. The respondent also submits to her each week, often during working hours, the pay-roll cards of its 600 to 800 piece-work operators which she examines for the purpose of determining whether each operator has received the minimum wage guaranteed by the respondent's agreement with the D. G. W. U.

According to its bylaws, membership in the D. G. W. U. is open to all employees of the respondent, although the record indicates that the respondent's officials who have final authority to hire and discharge are not members. The membership roll of the D. G. W. U. includes the instructors, and inspectors or examiners who pass upon the quality of the operators' work and return unsatisfactory products to the operators. Among other members of the organization<sup>57</sup> are Ella Mae Hyde, employment manager, Lena Tyhurst, described by Baty as assistant factory manager or general inspector, Mrs. Nichols, in charge of setting piece-work rates, Marvin Price, adviser on mechanical matters and in charge of maintenance of the factory building and equipment, Ted Scoles, who distributes and directs the work in the cutting department, Mrs. Bogart, who delegates the work and instructs the employees in the dividing department, and Mrs. Martha Gray, who is in charge of the respondent's outlet store.<sup>58</sup> At a meeting of the Group Chairmen of the D. G. W. U. on June 15, 1937, it was proposed to restrict the privileges of department heads and instructors who held memberships in the organization by denying them the right to vote, but the record does not indicate that any such action was taken at that time or subsequently.

<sup>57</sup>Evidence of the membership of Mrs. Hyde and certain other supervisory employees is found in the respondent's rejected offer of proof that these named employees would testify that they had joined the D. G. W. U. of their own free will and have since continued to belong to the D. G. W. U. of their own free will and accord uninfluenced by the respondent. Even though the offered testimony was rejected, such an offer remains in the record as an admission of the respondent that the named persons are members of the D. G. W. U. See *Int'l Ass'n. of Machinists, Tool and Die Makers Lodge No. 35, affiliated with the I. A. M., and Production Lodge No. 1200, affiliated with the I. A. M. v. N. L. R. B.*, Ct. of App. D. C. No. 7258, decided November 20, 1939.

<sup>58</sup>See *supra*.

# 1. Conclusions as to the D. G. W. U.

## a. Supervisory employees

### (1) Instructors

In the incidents described in the preceding section certain employees designated by the respondent as in-[fol. 713] structors have figured prominently. The respondent contends that they are not supervisory employees because no authority to hire, discharge, or discipline has been vested in them since July 1935.

The respondent's plant is in part composed of sewing sections. In each of these sections there are approximately 40 operators, each of whom operates a sewing machine. Assigned to each of these sections is an instructor and an assistant called a thread-girl or floor girl. Among the duties of the instructor and thread girl in each section is the distribution of materials and supplies with which the operators work. The instructors also distribute directions as to how the work is to be done and teach the operators how to execute each step of the process. This much is undisputed. It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and plant superintendent the instructors had had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became production manager of the plant on June 25, 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the plant, and personally observes the conduct, character of work, efficiency, and general attitude of all employees.

The respondent has in its employ between 1100 and 1300 persons. On June 2, 1939, there were employed in the production and maintenance divisions, of which Baty is superintendent, 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 cutting-department employees, 15 dividers, 44 instructors and distributors, 14 mechanics and helpers, 11 bundle boys, 52

clerical workers, 60 miscellaneous timekeepers, 20 porters and maids, working on 10 floors of the plant. In view of the number of employees and the size of the plant, we find Baty's testimony in regard to the elimination of supervisors to be incredible. The record convinces us that after June 25, 1935, the instructors continued to be supervisors in charge of the operators who worked in the various sewing sections of the factory. The operators were never notified of the change in the authority of instructors. Nor was there any apparent change in the conduct of instructors after the advent of Baty in June 1935. None of the operators testified that Baty personally gave them any instructions or directions, or conferred with them about their work. The instructors continued to transmit directions to the operators, distributed the work and "kept the girls busy." The instructors are responsible to Baty and apparently report directly to him. Furthermore, Mrs. Reeves, who had preceded Baty as production manager and was afterward placed in charge of the respondent's merchandising department, stated in an affidavit [fol. 714] dated October 30, 1937, that "competent instructors teach the operators the particular operations to be performed by them, and constantly supervise the same." When work is slack in a section the instructor of the section determines the order in which operators shall take a day or half day off. Although Baty denied the instructors are charged with the duty of reporting on the efficiency of the operators who work in their respective sections, he admitted that he has asked the instructors on occasions and has received their opinions. The above-stated facts make it clear that prior to June 25, 1935, the instructors were supervisory employees authorized to discipline their subordinates and to participate in the determination of lay-offs and discharges, and that since that time the respondent has continued to hold them out to the operators as supervisory employees and has given no notice of any kind to the operators that the instructors had any less authority than formerly. On the basis of all the evidence, we find that the instructors are supervisory employees representing the management of the respondent in its relation to the operators who work in the various sections.

## (2) Rose Todd

Among the employees of the respondent who were active in the affairs of the Loyalty League and in the formation and administration of the D. G. W. U., Rose Todd has been outstanding. She was president of the League during the time that it played so effective a part in resisting the organizational campaign of the I. L. G. W. U. She was the dominating figure at the crucial meetings of the League on March 18 and April 27, 1937. Rose Todd's status in the plant and her relation to the management of the respondent is a subject of dispute. She has been in the employ of the respondent for approximately 13 years. She had variously served as a machine operator, thread girl, and on occasion as an instructor; she also had been engaged in setting piece-work rates for the respondent and had assisted Dewey Atchison, a supervisory employee in the manufacturing division, in making special studies of production methods. She left her employment with the respondent in 1931 and for about a year worked for the Gernes Garment Company where she first either assisted the production manager or in fact had charge of the plant and later acted as a traveling sales representative. When she returned to the employ of the respondent in 1933, she testified that she was told she would have to take whatever work there was. She worked for a time in the model department where model dresses are made up before general production in the models is begun. Sometime prior to 1937 she was given a desk in the plant—first on the ninth floor and later on the seventh floor—and assigned to her present duty which is the responsibility for keeping the [fol. 715] various sewing sections supplied with the necessary materials for maintaining operations. She moves about throughout the various sections of the plant each day, consulting with instructors and thread girls. When they report that requisitioned supplies have not been received, Miss Todd locates them and sends them to their proper destination. She is under the direct supervision of Lee Baty, the respondent's production manager. She receives a salary of \$130 per month from the respondent; the D. G. W. U. pays her \$65 per month for the work she does as General Chairman of that organization.



The Trial Examiner found that Miss Todd is a supervisory employee of the respondent. We agree with the Trial Examiner that Rose Todd is employed by the respondent in a supervisory capacity,<sup>59</sup> and so find.

Moreover, we are of the opinion that Rose Todd occupied a close and confidential relation to the management of the respondent which was made known to the employees by the respondent's conduct. Her close relation to the management is illustrated by the fact that on April 23, 1937, when the demonstrations in the plant occurred, the disturbance was reported to Rose Todd. When Baty ordered Fern Sigler from the floor to the office, he was accompanied by Rose Todd. At the conference which followed, Rose Todd dominated the scene and took the lead in questioning Fern Sigler about her union affiliation, although both Baty and Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Rose Todd opened the conference and talked to Fern Sigler of the respondent's policy of operating an open shop as if she represented the respondent. For example: "... we have had union people work here for years . . . We don't care. We have hired union people . . . I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it . . . We are going to run an open shop as long as the majority feels that way." Miss Todd also said: "My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't anymore think I could join a union than the man in the moon. I'd expect to be put out on the street and left there." Baty and Mrs. Hyde acquiesced in all that Miss Todd said and talked in the same vein. Thus, in this manner as well as in other ways hereinafter discussed, she was held out by the manage-

<sup>59</sup>Since she is a supervisory employee, the respondent is liable for her acts under the doctrine of *respondent superior*. *Swift & Co. v. N. L. R. B.*, 136 F.(2d) 87 (C.C.A. 10), mod'g and enf'g *Matter of Swift & Co. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, and United Packing House Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269.



ment of the respondent as an employee having authority to advise other employees with respect to joining or not joining labor organizations.

[fol. 716] Another fact pointing to the conclusion that Miss Todd represents the management is her statement during the conference above referred to: "We went downstairs and sent those girls back to work and they went back to work," and her testimony at the hearing that on the morning of the Sigler-Hull demonstrations she told employees, here and there in the plant, to return to their work. That the employees regarded her as a supervisor and agent of the respondent is evidenced by their obedience to her orders. Furthermore, her position in the plant was such that the respondent's telephone operators accepted and carried out her instructions when she requested an operator to notify each department that she wanted a meeting of employees.

The respondent likewise knew that Miss Todd made use of its facilities in carrying on the business of the D. G. W. U., part of which was its campaign against the I. L. G. W. U.,<sup>60</sup> for the respondent regularly sent to Miss Todd's desk in the plant information designed for the use of the D. G. W. U. and in other ways pointed out above, assisted her in administering the affairs of the D. G. W. U. Moreover, so far as the record indicates, the respondent did nothing to discourage any of these activities on company property and time.

We find that Rose Todd occupied a close and confidential, as well as supervisory, position with the respondent and further find that in her activities in the Loyalty League and the D. G. W. U. she was acting for, on behalf of, and with the knowledge and consent of the respondent.<sup>61</sup>

<sup>60</sup>That the D. G. W. U. was active in resisting the I. L. G. W. U. is evidenced by the repeated requests of Miss Todd at D. G. W. U. meetings that the members report to her when they had been solicited by I. L. G. W. U. representatives and what these representatives had said.

<sup>61</sup>*Int. Ass'n. of Machinists, Tool and Die Makers, Local No. 35 and Production Lodge No. 1200 v. N. L. R. B.*, Ct. App., D. C., No. 7258, decided November 20, 1939, en'g *Matter of The Serrick Corp. and Int. Union, U. A. W. A., Local No. 459*, 8 N. L. R. B. 621, in which the Court states:

The statute, we think purposely, does not define the particular methods or agents by which the employer may intermeddle unlawfully.

## [fol. 717] (3) Hobart Atherton

Hobart Atherton has been employed in the maintenance department of the respondent since November 1933. In addition to Atherton, the department employs one electrician, one carpenter, one painter, and three laborers. Atherton transmits instructions to the other employees in the department, receives requests for repairs, refers them to the proper employee, and keeps a record of the jobs assigned and those completed. He also assists with repair work wherever needed. Atherton and the respondent deny that he is a supervisory employee in charge of the maintenance department. To accept their testimony would leave this department without supervision and would mean that each of the employees in the department decides for himself what repair jobs he will undertake. There is no evidence that Baty, the plant superintendent, in any way directs these employees in their work.

We find that Hobart Atherton is a supervisory employee of the respondent in charge of the maintenance department of the plant.

## (4) Ella Mae Hyde

The respondent does not contest the Trial Examiner's finding that Mrs. Ella Mae Hyde is the employment manager for the respondent. However, there is testimony that she does not have final authority to hire and discharge employees. Such authority is unnecessary to establish that

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So to confine representation of him would open easy escape from the Act's provisions. Nothing in it requires that such representation be limited to officials having any particular kind or degree of authority such as "hiring and firing," "disciplinary power," or even "supervisory capacity." These evidences of authority make more plain the connection of the actor with the employer, but their absence does not preclude the existence of such a connection. What is required is that substantial evidence show that the actor, whatever his official position, is acting in fact on behalf of the employer, not for himself or others only, and that, by whatever method or means, the employer brings pressure to bear upon his employees which deprives them of free and independent choice.

Cf. *Cupples Co., Manufacturers v. N. L. R. B.*, 106 F.(2d) 100 (C.C.A. 8th), mod. and aff'g *Matter of Cupples Co. and Matchworkers Federal Labor Union*, 10 N. L. R. B. 168, where the Court refused to hold the respondent liable for the acts of an employee inasmuch as the respondent had not held out the said employee as a person having authority to advise others with respect to joining or not joining labor organizations, had not directed the acts to be done, and the acts had not been done with the respondent's knowledge or consent.

Mrs. Hyde is a supervisory employee authorized to represent the management with regard to its employment policies. Mrs. Hyde interviews all applicants, and makes recommendations when other department heads notify her of vacancies in personnel. She has apparent authority to lay off employees as evidenced by the fact that she sent Sylvia Hull home on the morning of April 23, 1937, after the anti-union demonstrations previously discussed.

We find that Mrs. Ella Mae Hyde is a supervisory employee of the respondent in charge of its employment department and has authority to represent the management with respect to the respondent's employment policies.

(5) Certain other supervisory employees

We have found that certain other employees occupying responsible positions, were members of the D. G. W. U. These persons are Mrs. Lena Tyhurst, assistant factory manager or general inspector, Marvin Price, in charge of maintenance of the building and equipment and adviser to Superintendent Baty on mechanical matters, Ted Scoles, distributor and director of work in the cutting department, and Mrs. Bogart, who delegates the work and instructs the [fol. 718] employees in the dividing department. Some of these employees had had authority to hire, discharge, and discipline employees before the appointment of Baty as plant superintendent and production manager. They are all directly responsible to Baty and transmit his instructions to other employees in their respective departments. There is no showing that other employees in these departments were aware of any curtailment of the authority of these department heads after Baty took charge.

We find that the above-named persons are supervisory employees and as such were representatives of the management.

b. Conclusions as to the respondent's formation and domination of the D. G. W. U.

We have found that prior to the effective date of the Act the respondent adopted a policy of opposition and hostility to unions generally and to the I. L. G. W. U. specifically. In furtherance of this policy the management

made it plain to the employees that loyalty to the respondent was synonymous with the rejection of outside union affiliation. We have further found that the respondent inspired and dominated the Loyalty League which had for its primary purpose the frustration of the efforts of the I. L. G. W. U. to organize the employees of the respondent. When in April 1937 the I. L. G. W. U. commenced to prepare for another organizational campaign among the respondent's employees, the respondent through the medium of the dominated Loyalty League and through its supervisory employees formed the D. G. W. U. to prevent such outside organization. The League hired the attorney who planned the D. G. W. U. and wrote its bylaws. It was the League which borrowed \$1,000 at the First National Bank on the security of its members, who included prominent supervisory officials of the respondent, and later raised, by assessment of its members, \$500 to pay his retainer fee, part of which retainer was for the attorney's services in organizing the D. G. W. U. The meeting of April 27, 1937, at which the D. G. W. U. was formed, was sponsored and financed by the League and was announced through the use of the respondent's facilities and attended by many of its supervisory staff. Rose Todd, president of the League, directed almost single-handed the course of that meeting. The rank and file of the respondent's employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure thus provided by the respondent, they emerged from that gathering with a labor organization of 1,300 members.

Like the League, membership in the D. G. W. U. includes a large number of the respondent's supervisory [fol. 719] employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd who has been General Chairman of the organization since its formation and whom we have found to be an agent of the management, the respondent has retained complete control of the policies of the D. G. W. U.

The record is replete with evidence of the respondent's assistance in the administration of the D. G. W. U. The



organization has no office or headquarters of any kind apart from the respondent's plant. The respondent's facilities have been freely used in carrying on the business of the D. G. W. U. The respondent denies knowledge of the use of its various facilities, but so persistent and frequent has been the practice of employment of the respondent's messenger, mail, and telephone service, bulletin board and filing cabinets, of conducting union business at Rose Todd's desk, and of holding meetings of the Group Chairmen in a supervisor's office, that we find it impossible to believe that the respondent was without knowledge of these activities. The fact that the respondent permitted meetings of the D. G. W. U. to take place on the first and second floor of the plant for many months without any question of charging rent therefor is also indicative of the respondent's encouragement of the organization.

Rose Todd is allowed to take whatever time during working hours is necessary for handling union business without any deductions from her salary, as illustrated, *inter alia*, by her trip to the respondent's St. Joseph plant to organize the D. G. W. U. there. Although some of this business has been carried on before and after working hours, it is clear from the record that she makes a practice of taking up union business at any time during the day. Sometimes the respondent has made available for examination during working hours the pay-roll cards, which Miss Todd checks each week on behalf of the D. G. W. U. Grievances are reported to Miss Todd and considered by her within a few minutes or an hour. These facts demonstrate that the respondent has permitted and encouraged Rose Todd to make use of company time for conducting the business of the D. G. W. U. and has thereby lent assistance to the D. G. W. U.

That the respondent lent encouragement and assistance to the D. G. W. U. becomes even more clear when its co-operative attitude toward the D. G. W. U. is compared with that expressed to the shop chairman of the I. L. G. W. U., Virginia Stroup, some 2 years earlier. In contrast to the hostility with which the respondent met the I. L. G. W. U. and its chairman, the D. G. W. U. was recognized by the respondent as a bargaining agent the day after



its organization and Rose Todd, president of the League and General Chairman of the D. G. W. U., was accorded almost complete freedom to rove through the plant, engaging alternately in performing duties in connection with the production process, and in handling matters relating first to [fol. 720] the Loyalty League and then to the D. G. W. U. without interference or objection from the respondent. This contrasting conduct necessarily conveyed to the employees the respondent's approval of the League and the D. G. W. U.

The completeness of the respondent's domination is demonstrated by the personnel of the D. G. W. U. committee for the adjustment of piece-work rates. Two of the three members of the committee are persons employed by the respondent to set piece-work rates in the first instance, and one of these two, Mrs. Nichols, is the respondent's final authority on what the rates shall be. The result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any of the means of independent collective bargaining with regard to piece-work rates ordinarily afforded by a labor organization.<sup>62</sup>

Negotiations between the respondent and the D. G. W. U. with regard to the terms of the articles of agreement signed on May 27, 1937, were completed in a few hours and the agreement signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed-shop contract with the I. L. G. W. U., voiced only 2 months earlier,<sup>63</sup> she made no protest when the D. G. W. U. made the same proposal. She stated, "I understand that [i. e. closed shop] is very essential to industrial peace." The closed shop was granted and membership in the labor organization of the respondent's choice became obligatory upon its employees. The contract also included a provision that the bargaining committee of the D. G. W. U. must be composed of employees with at least 1 year of prior employment in the respondent's plant. It was put in at the request of the respondent and without

<sup>62</sup>See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, and *Greyhound Management Corp.*, 303 U.S. 261.

<sup>63</sup>See *supra*, Section B.

protest from the committee representing the D. G. W. U. In effect it deprives the respondent's employees of their right to representatives of their own choosing. We do not mean to say that employees may not voluntarily limit their right in this way, but we think the fact that a clause so favorable to the employer was inserted without protest from the representatives of the employees is indicative of the respondent's domination. Although the quick negotiation of the contract with the D. G. W. U., the closed-shop clause insuring the stability and continuity of that organization, and the inclusion of a limitation as to persons who shall constitute the D. G. W. U. bargaining committee, standing alone, do not conclusively prove that the respondent dominated the D. G. W. U., where, as here, the record establishes other acts of direct intervention and assistance [fol. 721] by the respondent and where officers and membership of the employee organization include many of the respondent's supervisory employees, we are convinced that these were further acts of domination of and interference with the D. G. W. U. and contributions of support thereto.<sup>64</sup>

The respondent and the D. G. W. U. contend that its employees formed and joined the D. G. W. U. of their own free will in order to resist unionization by the I. L. G. W. U. and were not coerced or interfered with in their choice of the D. G. W. U. or in their rejection of the I. L. G. W. U. In support of this contention they sought to introduce the testimony of the members of the D. G. W. U. that they were not dominated by the respondent but formed, joined, and supported the organization of their own free will. They also offered evidence to show that the employees knew of the violence accompanying the I. L. G. W. U. organizational campaigns at other garment factories and of threats by I. L. G. W. U. representatives that the same tactics would be used at the respondent's plant and formed the D. G. W. U. for that reason. The Trial Examiner refused these offers of proof, ruling that such testimony was irrelevant and immaterial to the issues. We have affirmed the rulings of the Trial Examiner on those

<sup>64</sup>See *Hamilton-Brown Shoe Co. v. N. L. R. B.*, 104 F.(2d) 49 (C.C.A. 8th), mod'g and enf'g *Matter of Hamilton-Brown Shoe Co. and Local No. 125 United Shoe Workers of America*, C. I. O., 9 N. L. R. B. 1073.

offers of proof because, giving full credit to such testimony and assuming that the employees had other motives for rejecting the I. L. G. W. U. and joining the D. G. W. U. as an instrument for opposing the I. L. G. W. U., the fact remains that the record shows the respondent to have committed acts of domination, interference, and assistance in the formation and administration of the D. G. W. U. which makes that organization company dominated and not the free agent of its members.<sup>65</sup> Section 8 (2) proscribes such conduct on the part of employers, regardless of the ostensible willingness of employees to accede to it.

It is contended by the respondent that the Trial Examiner was in error in excluding testimony and exhibits concerning the provisions of various contracts existing between the I. L. G. W. U. and other garment companies offered to show that the bargaining negotiations between the D. G. W. U. and the respondent were genuine and the D. G. W. U. a bona fide union. Inasmuch as the issue before us is not whether the contracts were advantageous or beneficial to the employees, but whether the respondent dominated or interfered with the formation and administration of the D. G. W. U., we believe the proffered evidence was correctly excluded.

Upon all the evidence we find that the respondent dominated and interfered with the formation and administration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 2. Conclusions with respect to the contracts

We have found that the respondent dominated and interfered with the formation and the administration of the D. G. W. U. within the meaning of Section 8 (2) of the Act. The D. G. W. U., therefore, is not and never has been the lawful representative of the respondent's employees for the purposes of collective bargaining with regard to

<sup>65</sup>*N. L. R. B. v. Brown Paper Mill Co.* (C.C.A. 5th), decided January 17, 1940, *enfg Matter of Brown Paper Mills Co., Inc. and Int. Brotherhood of Paper Makers, affiliated with the A. A. of L.* 12 N. L. R. B. 60; *cf. Matter of New Era Die Company and I. A. M. Lodge 243, A. F. of L.* 19 N. L. R. B., No. 27.

rates of pay, wages, hours of employment, or other conditions of employment. Under these circumstances, the closed-shop contract, the supplemental wage agreement, and the check-off agreement, and any extensions, renewals, modifications, or supplements thereof, and any superseding contracts or agreements, between the respondent and the D. G. W. U. are void and of no effect.<sup>66</sup>

Moreover, the closed-shop agreement was an integral part of the respondent's plan to discourage and prevent membership of its employees in the I. L. G. W. U. The agreement required all employees of the respondent to join the D. G. W. U. and the bylaws of the D. G. W. U. prohibited its members from holding membership in any other labor organization. By making and publicizing among its employees a contract which compelled membership in the D. G. W. U. and in effect prohibited membership in the I. L. G. W. U. as a condition of employment, the respondent not only precluded its employees from making their own choice of a collective bargaining representative, but also, by adoption of such an employment policy, discriminated with regard to hire, tenure, terms, and conditions of employment.<sup>67</sup> The closed-shop proviso of Section 8 (3) of the Act does not protect such discrimination when committed pursuant to a contract with a labor organization found to have been company dominated.

We find that the respondent by entering into and publicizing the closed-shop contract with the D. G. W. U. discriminated in regard to the hire, tenure, terms, and conditions of employment of its employees, thereby discouraging membership in the I. L. G. W. U.; and that the [fol. 723] respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>66</sup>See *Hamilton-Brown Shoe Co. v. N. L. R. B.*, 104 F.(2d) 49 (C.C.A. 8th), mod'g and en'g *Matter of Hamilton-Brown Shoe Co. and Local No. 125 United Shoe Workers of America*, C. I. O., 9 N. L. R. B. 1073.

<sup>67</sup>*Matter of Monticello Manufacturing Corporation and Steel Workers Organizing Committee*, No. 2085, affiliated with the C. I. O., 17 N. L. R. B. No. 109.



#### D. *The alleged discharges*

The amended complaint alleges that the respondent discharged from its employment Sylvia Hull on or about April 23, 1937, and May Fike, on or about April 26, 1937, and thereafter refused to reinstate them, because they had joined and assisted the I. L. G. W. U.

*Sylvia Hull* became a member of the I. L. G. W. U. on March 23, 1937, and on April 22, 1937, it was publicly announced by the I. L. G. W. U. office in Kansas City that she would represent the respondent's employees at the biennial convention of that organization in May 1937.

We have previously described the anti-union demonstration by employees against Sylvia Hull on the morning of April 23, 1937, which we have found was condoned and encouraged by the respondent. During the demonstration Mrs. Hyde, the respondent's employment manager, removed Sylvia from her machine and told her that she would have to go home. Sylvia replied that she did not want to quit but would go home for the day. Mrs. Hyde took her employee identification card which was necessary for admission to the plant and when Sylvia asked how she would get back into the plant Mrs. Hyde told her that she would come down to the door and admit her. At the same time Mrs. Hyde took the telephone number of a neighbor through whom Sylvia stated she could be reached and agreed to call her, and also asked Sylvia to get in touch with the respondent if she did not receive a call, inasmuch as the telephone number Sylvia left was that of a neighbor. Sylvia thereupon left the plant. Mrs. Hyde testified that she attempted to reach Sylvia by telephone the next morning, April 24, and on another occasion within a month thereafter, on the instruction of Mr. Baty, the respondent's production manager.<sup>68</sup> Sylvia never received notification to return to work and never applied to the respondent for reinstatement. She did not testify in this proceeding.

The respondent contends that Sylvia voluntarily left the employ of the respondent. This contention is based on Sylvia's statement, made when a number of the anti-union

<sup>68</sup>Mrs. Hyde testified that the purpose of these calls was to inform Mrs. Hull that "Mr. Baty would like to talk with her again."



demonstrators demanded that Sylvia go home, that she would go home, and on the fact that she did not thereafter seek to return. However, when Mrs. Hyde subsequently told her she would have to leave the plant, Sylvia refused to quit her employment but agreed to go home for the day. [fol. 724] We think that the facts plainly show that Sylvia did not voluntarily give up her position with the respondent, and only acquiesced in a 1-day lay-off under pressure from the respondent. Furthermore, the fact that Mrs. Hyde agreed to call her indicates that the respondent did not consider Sylvia's statement a resignation of her employment.

We find that Sylvia Hull did not voluntarily leave the employment of the respondent, but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the I. L. G. W. U.<sup>69</sup> We therefore find that the respondent discriminated in regard to her tenure of employment,<sup>70</sup> thereby discouraging membership in the I. L. G. W. U., and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that under all the circumstances the respondent's effort to communicate with her after her lay-off was equivalent to an offer of reinstatement<sup>71</sup> and that the respondent did not discriminatorily refuse to reinstate her within the meaning of Section 8 (3) of the Act.

May Fike was first employed by the respondent in 1926 or 1927 and with the exception of approximately 2 years

<sup>69</sup>See *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Co. Corporations and Local Division No. 1063 of the Amalgamated Ass'n of Street, Electric Ry. and Motorcoach Employees of America*, 1 N. L. R. B. 1, 36, where the Board held a "furlough" because of union activities was a violation of Section 8 (3) of the Act.

<sup>70</sup>The respondent does not contend that it was compelled to lay off Mrs. Hull because of the demands of its other employees. Even assuming that such action was taken for that reason, the existence of such coercive pressure affords no defense to a violation of the Act. See *National Labor Relations Board v. Star Publishing Co.*, 97 F.(2d) 465, 470, enfg *Matter of Star Publishing Co. and Seattle Newspapers Guild, Local No. 82*, 4 N. L. R. B. 498.

<sup>71</sup>While Mrs. Hyde did not state that the respondent sought to offer Mrs. Hull reinstatement, from all the circumstances we infer that that was the respondent's purpose. The Trial Examiner in effect so found and did not recommend either reinstatement or back pay for Mrs. Hull.

in 1931-32 was continuously in the employ of the respondent until May 1, 1937. She joined the I. L. G. W. U. on March 15, 1937. She is a sister of Fern Sigler, a member of the I. L. G. W. U., against whom three anti-union demonstrations were staged by the respondent's employees on the morning of April 23, 1937, as a result of which Mrs. Sigler was forced to leave the plant. Mrs. Fike, who was employed in a sewing machine section adjacent to that in which these demonstrations occurred, testified that a number of the operators in her section talked to her in the presence of her instructor, Pearl Atchison, about the fact that Mrs. Fike's sister was a member of the I. L. G. W. U. She further testified that Mrs. Atchison questioned her on the morning of the demonstration about her knowledge of Fern Sigler's membership in the I. L. G. W. U. and about her own membership in that union. Mrs. Fike stated that she first denied and then admitted that she was a member of the I. L. G. W. U. She also testified that her instructor [fol. 725] told her that she would lose her job because of the demonstration against her sister, Fern Sigler. Mrs. Atchison denied that the conversation concerned Fern Sigler and the demonstration against her or that she asked Mrs. Fike whether she was a member of the I. L. G. W. U. However, Mrs. Atchison does not deny that she talked to Mrs. Fike that day, nor does she deny that she discovered Mrs. Fike was a member of the I. L. G. W. U. In view of the widespread commotion caused by the demonstration against Fern Sigler in the adjacent section and the fact that it was generally known that Mrs. Sigler and Mrs. Fike were sisters, we are persuaded that Mrs. Fike's version of the conversation is substantially correct. Accordingly, we find that Mrs. Atchison knew that Mrs. Fike was a sister of Fern Sigler and that both were members of the I. L. G. W. U.,<sup>72</sup> and warned her that she was in danger of losing her job because of these facts. Since Mrs. Atchison is a supervisory employee, and in her

<sup>72</sup>Lee Baty testified that he did not learn of Mrs. Fike's membership in the I. L. G. W. U. until 1939. Under all the circumstances we do not credit that testimony.

capacity as instructor represented the management, the respondent is responsible for her statements and conduct.<sup>73</sup>

The demonstrations and statements made by Mrs. Atchison to Mrs. Fike hereinabove described occurred on Friday, April 23. On Monday, April 26, when Mrs. Fike reported for work, Pearl Atchison told her that she would have to go home because work in that section was slack. It was customary, when work was slack, for girls in the section to take a half day or a day off in turn. However, Mrs. Fike had already taken her turn. When she protested at being laid off out of turn, Mrs. Atchison replied, "... that is orders from the office." Mrs. Fike thereupon went to Mrs. Hyde, the employment manager, and asked her if she had been singled out for a lay-off because of the demonstration against her sister. Mrs. Hyde denied this<sup>74</sup> and told her to telephone the plant about work the following day. Mrs. Fike did so, and was directed to return. She worked from the afternoon of April 27 through April 30. Although Mrs. Fike was returned to work after losing only 1 day's employment we are convinced and find that her lay-off out of turn was because of her connection with the I. L. G. W. U.<sup>75</sup>

On April 28 or 29, May Fike requested Mrs. Hyde to permit her to take her vacation the first 2 weeks in May. According to Mrs. Fike, Mrs. Hyde told her she might go, [fol. 726] but that if she did so, she would have to take whatever work there was when she returned, since the volume of production at the plant would be reduced by that time. Mrs. Fike testified that with this understanding she went on her vacation.

<sup>73</sup>*Swift & Co. v. National Labor Relations Board*, 106 F.(2d) 87, mod'g and enfg Matter of *Swift & Co. and Amalgamated Meat Cutters and Butcher Workmen of N. A., Local No. 641*, and *United Packing House Workers Local Independent Union No. 300*; 7 N. L. R. B. 269.

<sup>74</sup>The respondent did not offer any explanation for Mrs. Fike's lay-off out of turn either at the time of the latter's protest or at the hearing.

<sup>75</sup>The complaint does not allege that the 1-day lay-off of Mrs. Fike was a discrimination with regard to hire and tenure of her employment, and our finding in respect thereto is stated here only in support of our ultimate conclusion that Mrs. Fike was discriminatorily refused reinstatement and in effect discharged at a later date.

Mrs. Fike's vacation period expired on Monday, May 17. Prior to that date, on May 12, she came down to the plant, and while there inquired of Mrs. Hyde whether there would be work on the following Monday. Mrs. Hyde told her that she did not know and instructed her to call in on Friday, May 14. Mrs. Fike called, and Mrs. Hyde told her that she did not know whether there would be work, but to inquire again on Monday morning, May 17. On Monday, Mrs. Fike was told that there was no work, but to call up later. Thereafter, over a period of several weeks, Mrs. Fike telephoned to Mrs. Hyde a number of times. Each time she was told that there was no work. On the last occasion Mrs. Hyde told Mrs. Fike that she would call her when the respondent needed her. Mrs. Fike has never been called by the respondent during the 2 years intervening between the termination of her employment and the date of the hearing in this proceeding.

The respondent defends the termination of Mrs. Fike's employment on the ground that she left voluntarily on April 30, 1937, after being told that if she took her vacation at that time she could consider herself discharged. Mr. Baty and Mrs. Hyde both stated that Mrs. Fike was so informed. However, we do not think this testimony is consistent with Mrs. Hyde's subsequent conduct. When Mrs. Fike inquired of her about work on May 12, Mrs. Hyde did not mention any discharge and told her to call in again. On later occasions, during the several succeeding weeks, when Mrs. Fike telephoned, Mrs. Hyde told her that there was no work but to call again, and finally told her that the respondent would notify her when she was needed. This conduct on the part of Mrs. Hyde indicates to us that Mrs. Fike was not told, as claimed by the respondent, that if she insisted upon taking her vacation she could consider herself discharged; rather, it supports Mrs. Fike's testimony that she was told she would have to take whatever work there was when she returned. We therefore find that May Fike did not voluntarily leave the employ of the respondent on April 30, 1937, but went on vacation at that time with the understanding that she would be taken back when work was available.



It is also contended by the respondent that May Fike was refused reinstatement on May 17 and thereafter because there was no work for her. But the respondent's own employment records and testimony show that this is not true. Prior to the time May Fike took her vacation she was engaged in sewing underseam bindings. In her [fol. 727] section there were some 14 or 15 operators who devoted all of their time to underseam binding. The employment cards of these 14 operators show that during the week of May 17, which ended on May 21, every one of them worked more than 40 hours—the customary workweek. Nearly all of the 14 worked 53 hours that week. During the week ending May 28, 11 of the 14 worked overtime and only 2 put in less than 40 hours. Yet, during these 2 weeks, Mrs. Fike was told on several occasions that there was no work. Furthermore, the respondent's production manager, Lee Baty, testified that from April 1, 1937, to June 15 or 20, the respondent was unable to meet its production dead lines. Baty also admitted that there was work at the time Mrs. Fike desired to return, but he asserted that there was not enough to justify bringing back operators who had been laid off. Mrs. Hyde testified that the month of May was one of the biggest production months, that on May 12, 1937, the plant was operating at capacity and continued to operate at capacity until the latter part of June. Moreover, even though the slack season was approaching when Mrs. Fike completed her vacation, this is no defense to the respondent's refusal to give her work sometime later when production again increased. Although Mrs. Hyde last said that she would call Mrs. Fike when the respondent needed her, neither Mrs. Hyde nor any other of the respondent's supervisors has done so in the 2 years since May 1937. From these facts we find that May Fike was not denied reinstatement by the respondent because there was no work for her.

Finally, the respondent takes the position that Mrs. Fike has never been reinstated because she was an inefficient operator. Lee Baty testified that he recalled that over a 3-year period a great deal of her work had been returned to her by the respondent's inspectors for repairing and resewing. No records were available to show the amount of repair work, nor did any of the inspectors testify con-



cerning Mrs. Fike's work. On the other hand, Mrs. Fike had been employed by the respondent for more than 10 years. It does not seem reasonable to suppose that the respondent would have continued to employ her for so long a period if her work was unsatisfactory. Nor is there evidence that any of the respondent's supervisory officials ever discussed with Mrs. Fike the character of her work.

On the basis of all the evidence we find that May Fike was denied reinstatement and in effect discharged by the respondent after her vacation because of her membership in and activities on behalf of the I. L. G. W. U. We therefore find that the respondent discriminated in regard to the hire and tenure of employment of May Fike, thereby [fol. 728] discouraging membership in the I. L. G. W. U.,<sup>76</sup> and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since the termination of her employment at the respondent's factory, Mrs. Fike has worked intermittently at two other garment factories, and had employment at the time she testified in this proceeding.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

We find that the activities of the respondent set forth in Section III above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

We have found that the respondent has engaged in and is engaging in unfair labor practices by dominating and interfering with the formation and administration of the D. G. W. U. and by contributing support to it; by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the

<sup>76</sup>See *Matter of Waterman Steamship Corp. and N. M. U. of America, Eng. Div., Mobile Branch, Mobile, Ala.*, 7 N. L. R. B. 237, 249-50, enfd in *Waterman Steamship Corp. v. N. L. R. B.*, U.S. Sup. Ct., Case No. 193, decided February 12, 1940, rev'g in part and aff'g in part 103 F.(2d) 157 (C.C.A. 5).

Act; and by discriminating in regard to the hire and tenure of employment of its employees and the terms and conditions of their employment, thereby discouraging membership in the I. L. G. W. U. and encouraging membership in the D. G. W. U. We shall order the respondent to cease and desist from these unfair labor practices. To effectuate the policies of the Act we shall order the respondent to withdraw recognition from the D. G. W. U. and to disestablish it completely as the representative of any of the respondent's employees for the purpose of collective bargaining. Since we have found that the D. G. W. U. is dominated and assisted by the respondent and that the closed-shop contract granted to the D. G. W. U. by the respondent was an integral part of the respondent's campaign to encourage membership in the D. G. W. U. and to discourage membership in the I. L. G. W. U., we shall order the respondent to cease and desist from giving effect to the contract of May 27, 1937, to the supplemental wage agreement of June 22, 1937, to all extensions, renewals, modifications, and supplements thereof, and to any superseding contracts which may now be in operation. However, nothing in this Decision and Order shall be taken to [fol. 729] require the respondent to vary or abandon the substantive features embodied in the contracts, relating to rates of pay, wages, hours of employment, or other conditions of employment.<sup>77</sup> We shall also order the respondent to cease and desist from giving effect to the check-off agreement with the D. G. W. U. and to reimburse its employees for all amounts deducted from wages as dues for the D. G. W. U.<sup>78</sup>

We have found that the respondent discriminated in regard to the tenure of employment of Sylvia Hull on April 23, 1937, because of her membership in and activities on behalf of the I. L. G. W. U. Upon all the evidence we have also found that Sylvia Hull never communicated with the respondent after she left the plant on April 23 and

<sup>77</sup>Matter of Monticello Manufacturing Corporation and Steel Workers Organizing Committee, No. 2085, affiliated with the C. I. O., 17 N. L. R. B. No. 109.

<sup>78</sup>Matter of The Heller Brothers Company of Newcomerstown and International Brotherhood of Blacksmiths, Drop Forgers and Helpers, 7 N. L. R. B. 646, 656.

that the respondent made bona fide but unsuccessful efforts to communicate with her to offer her reinstatement. We have found that under all the circumstances the respondent's action was equivalent to an offer of reinstatement which Mrs. Hull, by her failure to communicate with the respondent after instructions to do so, refused to accept. We shall therefore withhold our customary order of reinstatement and we shall not require the respondent to make Mrs. Hull whole for any loss of pay incurred because of the discrimination against her on April 23, 1937.

We have found that the respondent discriminatorily discharged May Fike by refusing to permit her to resume her work at the termination of her vacation on May 17, 1937, because of her membership in and activities on behalf of the I. L. G. W. U. We shall, therefore, order the respondent to offer to May Fike full and immediate reinstatement to her former or substantially equivalent position. We shall also order the respondent to make whole May Fike for any loss of pay she may have suffered by reason of the discriminatory failure to reinstate her, by payment to her of a sum equal to the amount which she normally would have earned as wages from May 17, 1937, the date of that discrimination,<sup>79</sup> to the date of the respondent's offer of reinstatement, less net earnings<sup>80</sup> during said period, excluding from the computation of her back pay, the period from the

<sup>79</sup>We have chosen May 17, 1937, since that is the date on which Mrs. Fike's vacation period terminated and she normally would have returned to work. It is true that the record does not affirmatively establish that there was work for her on that day, but in view of the testimony that the respondent's plant was operating at capacity from May 12, 1937, to the latter part of June 1937, we find that the respondent could have given Mrs. Fike employment on May 17, 1937, and that her award of back pay should be computed from that date.

<sup>80</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Cross v. Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers, Local 290*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

date of service of the Intermediate Report to the date of [fol. 730] the Order herein, since the Trial Examiner found she was not discriminatorily discharged and recommended dismissal of the complaint with respect to her.<sup>21</sup>

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union and Donnelly Garment Workers Union are labor organizations; within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Donnelly Garment Workers Union, and contributing support to it, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to hire and tenure and terms and conditions of employment of its employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

#### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Re-

<sup>21</sup>This is in accord with our usual practice. See *Matter of The Louisville Refining Co. and Int. Ass'n. of Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844, 875.



lations Board hereby orders that Donnelly Garment Company, Kansas City, Missouri; its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation and administration of any other labor organization [fol. 731] of its employees, and from contributing financial or other support to said union or to any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and its supplemental wage agreement of June 22, 1937, or to any extensions, renewals, modifications, or supplements thereof or to any superseding contract and agreement which may now be in force with Donnelly Garment Workers Union; and from giving effect to its check-off agreement with the Donnelly Garment Workers Union;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or discouraging or encouraging membership in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from and completely disestablish Donnelly Garment Workers Union as the representative of any of its employees for the purpose of



dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Reimburse all employees who were members of the Donnelly Garment Workers Union for the dues it has deducted from their wages on behalf of said union;

(c) Offer to May Fike immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority and other rights and privileges;

(d) Make whole May Fike for any loss of pay she has suffered by reason of her discharge, by payment to her of a sum of money equal to that which she normally would have earned as wages during the period from May 17, 1937, to the date of such offer of reinstatement, less her net earnings during that period, but excluding from the computation of the amount due her the period from October 9, 1939, the date of service of the Intermediate Report, to the date of this Order; deducting from the amount otherwise due her monies earned by her during the period included within the computation for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Post immediately and keep posted for at least sixty (60) consecutive days from the date of posting, in conspicuous places throughout the plant, notices stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a), (b), (c), (d), and (e), and will take the affirmative action set forth in paragraphs 2 (a), (b), (c), and (d) of this Order; and further stating that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(f) Notify the Regional Director for the Seventeenth Region in writing within fifteen (15) days from the date of this Order what steps the respondent has taken to comply herewith.

[fol. 732] (Decision and Order of National Labor Relations Board, June 9, 1943.)

United States of America

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers Union, party to a contract.

Case No. C-1382.

On November 27, 1942, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto.

During the hearing, the Trial Examiner ruled upon various motions and upon objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Pursuant to notice, a hearing for the purpose of oral argument was held before the Board on March 16, 1943, at Washington, D. C. The respondent, the I. L. G. W. U., and the D. G. W. U. were represented by counsel and presented argument. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations made by the Trial Examiner, with the exceptions and qualifications noted below:

A. The remand; the evidence adduced pursuant thereto.

In remanding the case to the Board for further hearing, the Circuit Court directed that the respondent and the D. G. W. U. be permitted to adduce the previously proffered testimony of respondent's employees to show, in substance, that they formed and joined the D. G. W. U. of their own

free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and [fol. 733] the D. G. W. U. at the original hearing, the Board permitted the introduction of such testimony.<sup>1</sup> We have carefully considered all such evidence adduced by the respondent and the D. G. W. U. We find, however, that the testimony in question does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondent's domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates. Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case.<sup>2</sup> A consideration of all the evidence convinces us, and we find, that the respondent dominated and interfered with

<sup>1</sup>At the original hearing, the Trial Examiner, although denying the broad offers of proof submitted by the respondent and the D. G. W. U., nevertheless permitted 9 witnesses to testify that they joined the D. G. W. U. of their own free will. Twelve witnesses, whose testimony before Judge Miller in the infraction proceeding was admitted as part of the record, likewise testified that they voluntarily joined the D. G. W. U. At the further hearing, the respondent was permitted to introduce 11 witnesses who gave similar testimony in accordance with the respondent's offer of proof. Five of these witnesses, had also signed the D. G. W. U.'s offers of proof, and all of the 11 were examined by the D. G. W. U. pursuant to its offers.

<sup>2</sup>See *Bethlehem Steel Company, et al. vs. N. L. R. B.*, 120 F. (2d) 641 (App. D. C.), en'g *Matter of Bethlehem Steel Corporation, a Delaware corporation and Steel Workers Organizing Committee*, 14 N. L. R. B. 539; *American Enka Corp. vs. N. L. R. B.* 119 F. (2d) 60 (C. C. A. 4), en'g *Matter of American Enka Corporation and Textile Workers Union*, No. 22129; *American Federation of Labor*, 27 N. L. R. B. 1057; *N. L. R. B. vs. Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), cert. den. 310 U. S. 651, en'g *Matter of Brown Paper Mill Company, Inc. Monroe, Louisiana and International Brotherhood of Paper Makers, affiliated with the American Federation of Labor and International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor*, 12 N. L. R. B. 60; *Bethlehem Shipbuilding Corp. vs. N. L. R. B.*, 114 F. (2d) 930 (C. C. A. 1), en'g *Matter of Bethlehem Shipbuilding Corporation, Limited and Industrial Union of Marine and*

the formation and administration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

**B. Membership and participation in the D. G. W. U. by alleged supervisory employees.**

The Trial Examiner found that Harry Grogan, listed on the pay roll under the heading, "Instructors and Floor Ladies," and Hilda Richmond and Veda Hoyland, listed under the payroll heading, "Buying Records," were supervisory employees whose participation in D. G. W. U. affairs was attributable to the respondent. It appears that Grogan was inadvertently listed on the payroll as an instructor. [fol. 734] There is no other evidence that he was employed in a supervisory capacity. While Richmond and Hoyland appear under the heading of "Buying Records," which covers the executive force and other salaried workers of the respondent, we are of the opinion that this fact, in the absence of other evidence, is insufficient to warrant a finding that they enjoyed a supervisory status. Accordingly, we find that the activities of these three employees in connection with the D. G. W. U. are not attributable to the respondent.

**Order.**

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

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Shipbuilding Workers of America, 11 N. L. R. B. 105; N. L. R. B. vs. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241, rev. mod. of Board order in 110 F. (2d) 506 (C. C. A. 7), enf'g as mod. Matter of Link-Belt Company and Lodge 1604 of Amalgamated Association of Iron, Steel and Tin Workers of North America through the Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, 12 N. L. R. B. 854; Corning Glass Works vs. N. L. R. B., 118 F. (2d) 625 (C. C. A. 2), enf'g as mod. Matter of Corning Glass Works, Macbeth-Evans Division and Federation of Flat Glass Workers of America, 15 N. L. R. B. 588; N. L. R. B. vs. New Era Die Co., 118 F. (2d) 500 (C. C. A. 3), enf'g as mod. Matter of New Era Die Company and International Association of Machinists, Lodge 243, A. F. of L., 19 N. L. R. B. 227.



1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers Union or any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers Union, and from giving effect to its check-off agreement with said organization;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;



(b)\* Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers Union;

(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices [fol. 735] to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization.

(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And It Is Further Ordered that the complaint, insofar as it alleges that the respondent, by discriminating in regard to the hire and tenure of employment of May Pike, has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 9 day of June, 1943.

Harry A. Millis, Chairman.

Gerald D. Reilly, Member.

• (Seal)

John M. Houston, Member.

NATIONAL LABOR RELATIONS  
BOARD.

[fol. 736] Intermediate Report.

The Intermediate Report attached to the foregoing Decision and Order of the National Labor Relations Board is omitted at this place in the printed record for the reason that the same heretofore appears at page 3837 of Volume X of the printed record.